IN THE SUPREME COURT OF THE STATE OF ALASKA

KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and the STATE OF ALASKA, DIVISION OF ELECTIONS, Appellants, v. ALASKANS FOR BETTER ELECTIONS, Appellee.	)	Supreme Court No. **S-17629**

Trial Court Case No. **3AN-19-09704 CI**

APPEAL FROM THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT ANCHORAGE
THE HONORABLE YVONNE LAMOUREUX, JUDGE

APPELLANTS'
EXCERPT OF RECORD
VOLUME 1 OF 1

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THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER ELECTIONS, Plaintiff, v. KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and the STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-19-0704CI

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Alaskans for Better Elections, by and through its attorneys, Holmes Weddle & Barcott, PC, hereby files this complaint against defendants Kevin Meyer, Lieutenant Governor of the State of Alaska, and the State of Alaska, Division of Elections by stating and alleging as follows:

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INTRODUCTION

1. This case is a challenge to the Lieutenant Governor's August 30, 2019, decision to deny certification of Alaska's Better Elections Initiative ("19AKBE").

2. By refusing to certify 19AKBE, the Lieutenant Governor has denied the citizens of Alaska the opportunity to lawfully exercise their right to the ballot initiative guaranteed by Article XI of the Alaska Constitution.

PARTIES

3. Plaintiff Alaskans for Better Elections is a ballot initiative committee that is working to put the power of Alaskan elections back in the hands of Alaskan voters, in order to make Alaska's elections more open, transparent, and fair. Alaskans for Better Elections is represented by a three-person initiative committee: Jason Grenn, Bonnie L. Jack, and Bruce Bothelo.

4. Defendant Kevin Meyer ("Lieutenant Governor") is being sued in his official capacity as the Lieutenant Governor of the State of Alaska.

5. Defendant Division of Elections is an agency of the State of Alaska, Office of the Lieutenant Governor, and is supervised by the Lieutenant Governor.

JURISDICTION

6. This Court has jurisdiction over this dispute under AS 22.10.020 and AS 15.45.240.

7. Alaska Statute 15.45.240 provides that "[a]ny person aggrieved by a determination made by the lieutenant governor under AS 15.45.010—15.45.220 may bring an action in the superior court to have the determination reviewed within 30 days of the date the determination was given."

8. Alaskans for Better Elections is an aggrieved person under AS 15.45.240, and can sue under Alaska Rule of Civil Procedure 17(b).

9. The Lieutenant Governor's determination was sent to the sponsors on August 30, 2019, 6 days ago. This Complaint is filed within the required 30 days.

FACTS & ALLEGATIONS

10. Alaskans for Better Elections filed their initiative petition with the defendants on July 3, 2019, and the Division of Elections designated it 19AKBE. Under AS 15.45.070, the Lieutenant Governor had 60 calendar days to either certify the application or notify the initiative committee of the grounds for denial. The Lieutenant Governor timely denied certification on August 30, 2019.

11. This lawsuit is brought in the interest of the public to enforce the provisions of Article XI of the Alaska Constitution, AS 15.45.010—15.45.245, and other law affording citizens the right to directly enact laws by initiative.

12. The Lieutenant Governor has unlawfully denied Alaskans for Better Elections and the citizens of Alaska the opportunity to exercise their constitutional initiative rights by refusing to certify 19AKBE.

13. The Lieutenant Governor's refusal to certify 19AKBE is incorrect as a matter of law.

14. The Lieutenant Governor's refusal to certify 19AKBE violates provisions of the Alaska Constitution and other provisions of law related to the initiative process.

PRAYER FOR RELIEF

Alaskans for Better Elections requests that the Court grant the following relief:

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A. Declare that the Lieutenant Governor's determination that 19AKBE addresses more than one subject in violation of the Alaska Constitution is incorrect as a matter of law;

B. Declare that 19AKBE is in the proper form;

C. Issue a preliminary injunction requiring the Lieutenant Governor to print and make petition booklets available by September 16th to protect the ability of Alaskans for Better Elections to file the full initiative petition on or before the start of the 2020 legislative session;

D. Issue a permanent injunction requiring the Lieutenant Governor to certify 19AKBE;

E. Award Alaskans for Better Elections their reasonable costs and attorney's fees;

F. Grant Alaskans for Better Elections such other relief as the Court deems necessary and proper.

Respectfully submitted this 5th day of September, 2019

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MEMORANDUM IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiff Alaskans for Better Elections ("ABE") seeks summary judgment under Civil Rule 56 ordering Defendants Kevin Meyer, Lieutenant Governor of the State of Alaska and the State of Alaska, Division of Elections ("Defendants") to certify the

Exc. 005

Alaska Better Elections Initiative ("19AKBE") and distribute signature petition booklets to the sponsors.

Although the parties dispute that the Lieutenant Governor is required to certify 19AKBE, they have agreed to expedite this matter in order to protect ABE's ability to gather signatures in time to place 19AKBE on a statewide election ballot in 2020.[1] This case is particularly amenable to a prompt resolution, because the parties agree that there are no disputed facts, and that the sole legal issue is whether 19AKBE violates the "single subject rule" articulated in article II, sec. 13 of the Alaska Constitution.

Attorney General Kevin Clarkson issued a results-oriented opinion that recommended rejection of 19AKBE by misapplying and plainly misstating the single subject rule. Accordingly, the Lieutenant Governor erred in relying on this opinion to reject 19AKBE, and ABE is entitled to summary judgment certifying the measure and ordering release of the petition signature booklets—thereby protecting Alaskans' constitutional right to enact laws by initiative.

II. LEGAL BACKGROUND

The Alaska Constitution guarantees Alaskans the right to "propose and enact laws by the initiative."[2] A ballot initiative application must include at least one hundred qualified sponsors and a designated initiative committee to represent them.[3] The Lieutenant Governor reviews initiative applications and must decide within 60 days

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[1] The parties proposed, and this court has agreed, to an expedited briefing and argument schedule, with the result that a decision should be rendered by no later than October 28, 2019. *See* September 19, 2019 Order approving Amended Stipulation.

[2] Alaska Const. art. XI, § 1.

[3] AS 15.45.030.

whether to certify an initiative.[4] If the Lieutenant Governor rejects the initiative application, "any person" may seek judicial review of that decision.[5]

Once a proposed initiative is certified, the Lieutenant Governor prints petition booklets and the sponsors must collect signatures from 10 percent of the qualified voters from the last general election in three-fourths of the State's house districts, who, in each house district, are equal in number to at least seven percent of those who voted in the preceding general election in that district.[6] The petition booklets must be completed and filed with the Lieutenant Governor within a year from the time sponsors receive notice from the Lieutenant Governor that the petition booklets were ready for delivery to them.[7] The Lieutenant Governor then has 60 days to review the petition booklets to determine whether the petition was properly filed, and notify the initiative committee of his determination and the specific election at which the ballot proposition will appear.[8]

In order for a ballot measure to appear on a statewide election ballot in 2020, the petition signatures must be filed prior to January 21, 2020—the first day of the 2020 legislative session.[9] If the petition signatures are filed later, the measure could not appear on a ballot until the 2022 statewide elections.[10]

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4 AS 15.45.070.
5 AS 15.45.240.
6 AS 15.45.140(a)(1)-(3).
7 AS 15.45.140(a).
8 AS 15.45.150.
9 AS 15.45.190(b).
10 *Id.*

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III. FACTUAL & PROCEDURAL BACKGROUND

Elections are critical to a functioning democracy. Today's elections are awash in secret money, and voter participation and choice are both suppressed and overshadowed by divisive partisan politics. 19AKBE will improve Alaska's elections—from the way our campaign finances are disclosed to the way elected officials attain office—in order to empower Alaskan voters and limit the undue control and influence of political donors and party elites. Current state laws governing the funding and conduct of elections have not been meaningfully updated in a way that reflects these concerns, and 19AKBE seeks to change that.

Recognizing the role of election reform in affirming the rights of voters, three Alaskans — Jason Grenn (an Independent), Bonnie L. Jack (a Republican), and Bruce Botelho (a Democrat) — formed an initiative committee and filed a ballot initiative application on July 3, 2019, titled the "Alaska Better Elections Initiative."[11] The Alaska Division of Elections designated the initiative "19AKBE." 19AKBE proposes substantive changes to Title 15 of the Alaska Statutes (i.e., the Alaska Election Code[12])—and *only* to the Alaska Election Code—by disclosing how Alaska's elections are funded; providing voters with more meaningful candidate choices through a nonpartisan open primary; and pairing that open primary with a ranked-choice general election system in which winning candidates receive the majority of votes cast.[13]

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11 Exhibit A (Complete text of 19AKBE).
12 AS 15.80.020.
13 *See* https://www.alaskansforbetterelections.com/summary.

On August 29, 2019, Attorney General Kevin Clarkson published his opinion on 19AKBE. Critically, the Attorney General's opinion concedes that 19AKBE reforms only the Alaska Election Code, and that it does so only in the ways listed above. The Attorney General accurately summarized the measure as follows:

> [19AKBE] establishes an open primary, moves to a ranked-choice general election, and changes campaign finance disclosure laws.[14]

Nevertheless, he concluded that the initiative met all legal requirements but one: in Attorney General Clarkson's view, 19AKBE was not confined to a single subject in violation of AS 15.45.040(1) and article II, sec. 13 of the Alaska Constitution.[15] The following day, the Lieutenant Governor notified the sponsors that he was following Attorney General Clarkson's advice in declining to certify 19AKBE.[16]

IV. STANDARD OF REVIEW

The Alaska Supreme Court has adopted a "deferential attitude toward initiatives."[17] The Court has consistently and repeatedly recognized that the constitutional and statutory provisions governing the use of the initiative should be liberally construed in favor of allowing an initiative to reach the ballot.[18] As such, judicial review of the constitutionality of an initiative is typically unavailable until after

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14 Exhibit B (August 29, 2019 Attorney General Opinion) at 8-9.

15 *Id.* at 12. As discussed herein, there is only a single standard, the one imposed by the Alaska Constitution, and the statute does not impose a separate burden, *see* page 7 and fn. 27 *infra*.

16 Exhibit C (August 30, 2019 letter from Lieutenant Governor Meyer). The Division of Elections separately determined that 19AKBE had met the initial signature threshold required to file the initiative application. *See* Exhibit D (July 23, 2019 Signature Review Memo from Director Gail Fenumiai).

17 *Yute Air Alaska, Inc. v. McAlpine,* 698 P.2d 1173, 1181 (Alaska 1985).

18 *McAlpine v. University of Alaska*, 762 P.2d 81, 91 (Alaska 1988); *see also Hughes v. Treadwell*, 341 P.3d 1121, 1125 (Alaska 2015) (confirming that the Alaska Supreme Court seeks to preserve the people's right to be heard through the initiative process "wherever possible").

it has been enacted by the voters.[19] There are two exceptions to this rule barring pre-election judicial review.[20] "First, a petition may be rejected if it violates the subject matter restrictions that arise from the constitutional and statutory provisions governing initiatives" and second, "a petition may be rejected if it proposes a substantive ordinance where controlling authority establishes its unconstitutionality."[21]

The parties agree that the only issue in this case is whether 19AKBE is confined to a single subject as required by AS 15.45.080(1) and art. II, sec. 13 of the Alaska Constitution.[22] Whether 19AKBE violates the single subject rule is a question of law.[23] Courts review questions of law *de novo*, applying their independent judgment and adopting the rule of law most persuasive in light of precedent, reason and policy.[24]

V. ARGUMENT

19AKBE clearly complies with Alaska's broad single subject rule. Were this court to rule otherwise, it would be announcing a new position, under a new standard invented by the current Attorney General, that is both contrary to binding case law and that would have unintended consequences and implications not just for the initiative process, but for all future legislative enactments as well.

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19 *Kohlhaas v. State, Office of Lieutenant Governor*, 147 P.3d 714, 717 (Alaska 2006).
20 *Id.*
21 *Id.* (internal citations and quotations omitted).
22 Exhibit B at 9.
23 *Croft v. Parnell*, 236 P.3d 369, 371 (Alaska 2010).
24 *Id.*

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A. Alaska's Single Subject Framework.

Art. II, sec. 13 of the Alaska Constitution requires that every bill have only one subject.[25] The single subject rule applies whether a bill is enacted by the legislature or by the people via initiative.[26] Given this constitutional restriction, the legislature included the single-subject rule in the statutes setting forth the initiative process. Alaska Statute 15.45.040, requires, among other things, that a "proposed bill shall be [...] confined to one subject." However, the statute simply restates the restriction in the constitution and does not add any additional burden to the legality of initiatives. Thus, initiatives are bound by a single subject standard identical to the one applied to legislation.[27]

The Alaska Supreme Court's single subject framework, as articulated in *Yute Air Alaska Inc. v. McAlpine*, simply requires that an initiative "embrace [...] one *general* subject; and by this is meant, merely, that all matters treated of should fall under some *one general idea*, be so connected with or related to each other, either logically *or in popular understanding*, as to be parts of, or germane to, one *general*

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25 In relevant part, the Constitution directs that "[e]very bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws." Alaska Const., art. II, sec.13.

26 The Alaska Supreme Court applies the Article II restriction to initiatives pursuant to Article XII, sec. 11, which provides that the people may exercise *the legislature's* law-making powers through the initiative. *Yute Air Alaska Inc.*, 698 P.2d at 1173; *see also Croft*, 236 P.3d at 369.

27 *See Croft*, 236 P.3d at 371-72 & n.2 (noting that neither the Lieutenant Governor nor the sponsors argued that the statute imposes, or can impose, a different standard than that imposed by the Constitution).

subject."[28] The Court has made clear that what constitutes one subject must be "broadly construed."[29]

The purpose of applying the single-subject rule at all is that it "prevents the adoption of policies through stealth or fraud, and prevents the passage of measures lacking popular support by means of log-rolling."[30] Applied to extreme examples, it also protects the voters by allowing them to "effectively exercise their right to vote"[31] and "express their will through their votes more precisely,"[32] by "requiring that different proposals be voted on separately."[33] Yet, despite those specific concerns, the Court has repeatedly articulated the breadth of this standard, and *consistently declined to narrow or strictly construe it in application* to specific proposals.[34] Additionally, the Court has raised two important considerations to be weighed within this general framework:

> First, the fact that, in practice "the sponsors of [an] initiative have relied on our precedents in preparing the present proposition and undertaking the considerable expense and time and effort needed to place it on the ballot."[35]

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28 *Yute AirAlaska, Inc.*, 698 P.2d at 1180-1181, *quoting Gellert v. State*, 522 P.2d 1120, 1123 (Alaska 1974) (emphasis added).

29 *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406, 415 (Alaska 1982); *Short v. State*, 600 P.2d 20, 23 (Alaska 1979); *North Slope Borough v. SOHIO Petroleum Corp*, 585 P.2d 534, 545 (Alaska 1978); *Gellert v. State*, 522 P2d 1120, 1122 (Alaska 1974)

30 *Croft*, 236 P.3d at 371-72 & n.2 (emphasis added); *Suber v. Alaska State Bond Comm.*, 414 P.2d 546, 557 (Alaska 1966); *see also Gellert*, 522 P.2d at 1122.

31 *Croft*, 236 P.3d at 372.

32 *Id.; see also, Suber*, 414 P.2d at 557; *see also Gellert*, 522 P.2d at 1122 ("Log-rolling consists of deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure.").

33 *Id.* (emphasis added).

34 *First Nat'l Bank of Anchorage*, 660 P.2d at 415; *Short*, 600 P.2d at 23; *North Slope Borough*, 585 P.2d at 545; *Gellert*, 522 P.2d at 1122.

35 *Yute Air Alaska Inc.*, 698 P.2d at 1181 (internal citations omitted), citing *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974); *Mun. of Anchorage v. Frohne*, 568 P.2d 3, 8 (Alaska 1977).

And second, that,

> an initiative is an act of direct democracy guaranteed by our constitution. Because petitions are often prepared by inexpert sponsors who nonetheless espouse worthy or popular causes, or both, courts are reluctant to invalidate them in cases of merely doubtful legality. In matters of initiative and referendum, we have previously recognized that the people are exercising a power reserved to them by the constitution and the laws of the state, and that the constitutional and statutory provisions under which they proceed should be liberally construed. To that end "all doubts as to all technical deficiencies or failure to comply with the exact letter of procedure will be resolved in favor of the accomplishment of that purpose."[36]

Each time the Court has reviewed a single-subject challenge, it has articulated and applied a broad interpretation of the single-subject rule that favors preserving a measure. In total, the Court has issued eight rulings on single-subject challenges,[37] and, in all but one case, has upheld the measure under review by identifying a single subject that encompasses all of its provisions.[38] Time and again, the Court has concluded its analysis by holding each provision of a challenged measure to be part and parcel of an overarching, single subject, including in cases involving exceptionally broad subjects

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36 *Id.* (emphasis added).

37 *See Croft*, 236 P.3d 369; *Evans ex rel. Kutch v. State*, 56 P.3d 1046 (Alaska 2002); *Yute Air Alaska, Inc.* 698 P.2d 1173; *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406 (Alaska 1982), *Short*, 600 P.2d 20, *North Slope Borough*, 585 P.2d 534, *Gellert*, 522 P.2d 1120; *Suber*, 414 P.2d 546.

38 *Id.*; *see also Evans ex rel. Kutch v. State*, 56 P.3d 1046 (Alaska 2002); *First Nat'l Bank of Anchorage*, 660 P.2d 406; *Short*, 600 P.2d 20; *North Slope Borough*, 585 P.2d 534; *Gellert*, 522 P.2d 1120; *Suber*, 414 P.2d 546.

such as "land,"[39] "state taxation,"[40] "protection of the public,"[41] "development of water resources,"[42] "civil actions,"[43] and "transportation."[44]

The permissibility of such broad subjects has consistently been reflected in prior single-subject determinations of the Attorney General's Office as well.[45] A review of these prior determinations makes evident that Attorney General Clarkson's opinion on 19AKBE is an outlier lacking any basis in either the Court's precedent *or* in the past opinions of his own office, which constitute persuasive authority that is entitled to a degree of deference from the Court.[46]

B. 19AKBE Fits Squarely Within the Court's Single-Subject Framework.

That 19AKBE meets Alaska's single subject test is not even a close call. Across single subjects that span far greater conceptual distances than the provisions at issue in 19AKBE, the Alaska Supreme Court has consistently upheld challenged measures, rejected alternative constructions that obstruct the people's will as expressed through the initiative, and persistently adhered to an interpretation of the single-subject rule

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39 *First Nat'l Bank of Anchorage,* 660 P.2d 406.
40 *North Slope Borough,* 585 P.2d 534.
41 *Short*, 600 P.2d 20.
42 *Gellert,* 522 P.2d 1120.
43 *Evans ex rel. Kutch*, 56 P.3d 1046.
44 *Yute Air Alaska, Inc.*, 698 P.2d 1173.
45 *See, e.g.,* Exhibit E, 17AKGA ("government accountability") (2017 Op. Alaska Att'y Gen. (Oct. 6)); Exhibit F, 17FSH2 ("protection of wild salmon and fish and wildlife habitat") (2017 Op. Alaska Att'y Gen. (Sept. 6)); Exhibit G, 14CPO2 ("criminalizing official corruption") (2014 Op. Alaska Att'y Gen. (Nov. 26)); Exhibit H, 09OPUP ("making conduct related to the enrichment of public officials illegal") (2009 Op. Alaska Att'y Gen. (May 27)).
46 *See, e,g., Carney v. State Bd. of Fisheries*, 785 P2d. 544 (Alaska 1990); *Myers v. Alaska Housing Finance Corp.*, 68 P.3d 386 (Alaska 2003).

that safeguards initiatives as "act[s] of direct democracy guaranteed by our constitution."[47]

19AKBE is squarely aligned with the Court's universal thread of consistent precedent. Its provisions manifest one "general idea," and are all connected with and related to each other both "logically" and "in popular understanding" as to be part of and germane to the single subject of improving Alaska's elections system – of making those systems function "better" to express the will of Alaskans. To that end, 19AKBE contains a narrow thread of election law reforms that seek to elevate the voice of Alaska voters by giving them not only more choices in their elections, but by preventing those choices from being unduly dictated or unknowingly influenced by political parties or large, well-financed interests.

19AKBE contains 74 separate "sections." But that number only indicates the number of statutory sections that must be amended to cleanly integrate the initiative across the Elections Code. It does not evidence any overall complexity. In fact—as the Clarkson opinion concedes[48]—19AKBE enacts just three substantive reforms:[49] Amending campaign disclosure law to require fuller, and more timely disclosure, of contributions; creating an open, "Top 4" primary election; and adopting "ranked choice voting" in the general election. All three reforms are interconnected and focused on

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47 *Yute Air Alaska, Inc.*, 698 P.2d at 1181.

48 *See, supra* pg 5, fn. 14.

49 19AKBE makes numerous other "housekeeping" changes to the law (i.e.-- timelines for filing campaign disclosures, amending the qualifications for political parties, etc.) however these smaller changes are simply the result of the larger policy changes enacted by the measure, and are made to ensure that the initiative is drafted as well and as clearly as it can be.

empowering Alaska's voters by giving them more voice and more choice in their elections.

First, 19AKBE enhances campaign finance disclosures through a few changes. It prohibits the use of "Dark Money"—the practice of passing contributions through intermediaries to avoid reporting the true source of the funds—in candidate elections in Alaska. It also requires that any contribution of $2,000 or more to an independent expenditure group[50] be reported within 24 hours. And, finally, any campaign group receiving a majority of its financial support from sources originating outside the state of Alaska must include a disclaimer to that effect in all of its communications. These enhanced disclosure requirements empower voters by providing them with more information, more quickly, regarding who is attempting to influence their votes.

The open "Top 4" primary system would allow all Alaskans to vote on the same primary ballot, on which every candidate for each office would appear. In contrast, Alaska currently operates a "semi-closed" primary election system where there are two separate ballots: one ballot contains all of the Republican Party candidates for office, while the other contains all Democratic and other recognized party candidates.[51] Only an Alaskan who is registered as a Republican, nonpartisan, or undeclared voter may

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50 Independent Expenditure Groups (also known as "IEs" or "SuperPACs") are the campaign groups that arose in the wake of the *Citizens United* U.S. Supreme Court decision and related decisions, allowing for unlimited contributions in support of candidates so long as the actions of the group receiving the support did not coordinate with the supported candidates.

51 At various times in the past, Alaska has recognized the Alaskan Independence Party, Alaska Republican Moderate Party, Alaska Libertarian Party, and the Alaska Green Party. A party is only officially recognized if they fielded a candidate who obtained at least 3% of the votes for governor, or if they have registered voters amounting to 3% of the total votes cast for governor. If the governor was not on the preceding election, the same rules are applied to the vote for U.S. Senator or, failing that, U.S. Representative.

vote the Republican ballot, while any registered voter may vote the other ballot. No voter may cast a vote for two candidates appearing on separate ballots.

For example, an independent primary election voter who wishes to vote for a Republican candidate for U.S. Senate cannot also vote for a Democratic candidate in a state house race—because no primary election ballot exists that contains both candidates. Unlike the existing system, an open "Top 4" primary election would have all candidates appearing on a single ballot. On that ballot, a voter may choose their preferred candidate in each race, regardless of the candidate's (or the voter's) party affiliations. This system enfranchises more voters by allowing them to vote for the candidates of their choice in every race.[52] After the results of this primary election are tabulated, the four candidates receiving the greatest number of votes, regardless of party, will proceed to the general election ballot. The open, "Top 4" primary system continues the thread of improving Alaska's elections systems by empowering individual voters with more choice and options regarding who will advance to the general election.

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[52] Additionally, Alaska's primaries have notoriously low turnout, usually half or less than the general election:

2018—Gen turnout=**49.8%**; Prim Open 7.5% + Prim R 12.7% = Combined Prim turnout **20.2%**
2016—Gen turnout=**60.3%**; Prim Open 6.1% + Prim R 10.7% = Combined Prim turnout **16.8%**
2014—Gen turnout=**55.5%**; Prim Open 14.1% + Prim R 22.3% = Combined Prim turnout **36.4%**
2012—Gen turnout=**59.6%**; Prim Open 8.7% + Prim R 15.3% = Combined Prim turnout **24.0%**
2010—Gen turnout=**52.3%**; Prim Open 9.9% + Prim R 22.4% = Combined Prim turnout **32.3%**
2008—Gen turnout=**66.0%**; Prim Open 15.9% + Prim R 21.7% = Combined Prim turnout **37.6%**

There are indications that open primaries would result in higher turnout—especially in Alaska, which has the nation's highest percentage of voters not affiliated with either major party. *See* https://www.timesunion.com/local/article/Would-open-primaries-drive-higher-voter-turnout-9223858.php (citing research that states with open primaries average approximately 9% higher turnout in their primary elections); *see also* https://bipartisanpolicy.org/report/2018-primary-elections-turnout-and-reforms/.

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Finally, 19AKBE adopts ranked choice voting—or "RCV"—for Alaska's general elections. Currently, Alaska general elections allow voters a single vote in each race. Whichever candidate obtains the greatest number of votes wins the race, even if that number is far below fifty percent, and regardless of whether a majority of voters actually preferred the other candidates. In 19AKBE's RCV system, voters will have the option to rank candidates in order of choice — first choice, second choice, third choice, and so on.[53] When the votes are counted, if a candidate receives a majority of first choices, they win—just like today. If no candidate receives a majority of first choices, the candidate with the fewest first choice votes is eliminated, and voters who ranked that candidate first have their vote assigned to their second choice. This process continues until a candidate is elected with a majority of voters' support. While the RCV system ensures that winning candidates receive a majority of votes cast, this reform's defining feature is that it gives voters more choice and more voice to express themselves on the ballot. Instead of having to worry about picking between the lesser of two evils—known as the "spoiler effect"—Alaskans would now rank their first, second, and third choice candidates. Once again, this reform continues the narrow thread of reforming Alaska's elections in order to empower individual voters with more meaningful opportunities to decide who represents them in public office.

In practice, it is evident that these reforms fall within a single subject given how they work together and augment each other. The enhanced campaign disclosures allow

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[53] If a voter wishes to vote for a single candidate, he or she still can, and their ballot will still be counted for their first choice as it is under current law.

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voters to know more about who is truly funding a campaign and make more informed choices during both primary and general elections. The open primaries give voters the opportunity to vote for *any* candidate they wish for each and every office, providing these voters with greater voice in who proceeds to the general election. The RCV general election, in turn, expands voter choice, and will itself function better because there will not simply be two polarized choices selected by the existing semi-closed primary system, but in many cases a spectrum of choices. Finally, the RCV system itself will prevent "spoiler" candidates causing the election of a winner with only a low plurality of votes,[54] because voters will be further empowered by the *option* of ranking their second and third choices.

In short, 19AKBE aims to reform and improve Alaska's elections by empowering voters. That empowerment comes from voters having more information, more quickly, regarding the source of contributions seeking to influence their vote in a candidate election; creating an open primary allowing Alaskans to vote for *any* candidates they choose for each office; and by implementing a ranked choice voting system in general elections, that gives Alaskans more opportunities to express their preferences on their ballot. As in *Yute Air Alaska*, where there was one broad, general topic of reducing regulations on transportation, 19AKBE is a unified measure on the single subject of *empowering individual Alaska voters*.

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[54] A "Top 4" primary alone, without RCV, would run a consistent risk of producing results where fringe or extreme candidates could actually win elections with percentages only in the high 30s because more closely aligned candidates take each other's support. This provides further evidence that all three reforms necessarily work together.

The sponsors of 19AKBE have relied on decades of Alaska Supreme Court precedent and on the Department of Law's consistent approval of proposed subjects – including those cited above, that are far more expansive than the subject at issue here: from "land" and "transportation," to "the protection of the public" and "government accountability"[55] – in preparing the "Alaska Better Elections Initiative" and in undertaking the considerable expense, time, and effort needed to place it on the ballot. The sponsors are exercising a "power reserved to them by the constitution and the laws of the state[.]"[56]

C. Attorney General Clarkson's Opinion Applied a New Standard Not Based in Law.

Attorney General Clarkson's opinion directed the Lieutenant Governor—and implicitly asks this court—to disregard binding Supreme Court precedent in rejecting 19AKBE. It applies a results-based analysis elevating a dissenting Justice's opinion in the *Yute Air* case[57] that is not controlling precedent, and advocates for a brand new standard, explicitly departing from the unified case law applying the single subject rule.

Implicitly recognizing that 19AKBE satisfies the single subject rule as applied to legislation, Attorney General Clarkson asserts a brand new standard for initiatives pulled from thin air. Citing no controlling authority whatsoever, he argues for the

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55 *First Nat'l Bank of Anchorage,* 660 P.2d 406; *North Slope Borough,* 585 P.2d 534; *Short,* 600 P.2d 20; *Gellert,* 522 P.2d 1120; *Evans ex rel. Kutch,* 56 P.3d 1046; and *Yute Air Alaska, Inc.,* 698 P.2d 1173.

56 *Yute Air Alaska, Inc.*, 698 P.2d at 1181 (citation omitted).

57 *See* Exhibit B at 11-12, citing the dissenting opinion of Justice Moore in *Yute Air Alaska, Inc.*, 698 P.2d at 1183-84.

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creation of a new, more stringent, single subject requirement for initiatives because "[u]nlike legislators, [voters] cannot deliberate, propose amendments, and compromise on the relative merits of dissimilar provisions" and must be "protect[ed] . . . from having to struggle with how to express their political will through a vote on an overly complex initiative bill covering disjointed subjects."[58]

This invented constitutional standard both condescends to voters and manufactures a distinction between initiative bills and legislative bills that not only appears nowhere in the constitution or in prior case law, but indeed is the exact opposite of what our case law instructs. The very question of whether to apply a more stringent "single subject" standard to ballot measures has already been asked and answered in the very case Attorney General Clarkson relies on, with the Court stating that— "not only is [a stricter application] adverse to [the Court's] deferential attitude toward initiatives, it also ignores the explicit constitutional directive to the contrary."[59] Specifically, art. XII, sec. 11 of the Alaska Constitution provides that "[u]nless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative…"[60]

The single subject rule is a constitutional limitation that applies equally and identically to legislative and initiative enactments; there is no different or higher standard to meet for initiatives.[61] And contrary to Attorney General Clarkson's

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58 Exhibit B at 12.
59 *Yute Air Alaska, Inc.*, 698 P.2d at 1181 (emphasis added).
60 *Id.* quoting same (emphasis added).
61 *Id.*

analysis, the *Croft* Court did not conclude that the initiative at issue was unconstitutional *because it was an initiative*.[62] The Court would have reached the same conclusion had the legislature attempted to enact legislation identical to the initiative. If anything, initiatives are given *more* leeway by the courts than legislative enactments, because initiative sponsors lack the same resources and sophistication as the legislature.[63]

Moreover, the Supreme Court has expressly rejected alternative interpretations of the single-subject rule that would lead to stricter applications, as "it is not at all clear that there *are* workable stricter standards."[64] This reluctance to narrow direct democracy has even manifested itself in the Court's explicit consideration and rejection of single-subject authorities from other states. In *Yute Air Alaska, Inc.*, the Court rejected Florida's single-subject rule forbidding initiatives that direct the functioning of more than one department of government, finding that "many laws … direct[ing] more than one governmental department to act,"[65] can nevertheless "embrac[e] a single subject," and reaffirming that "an initiative is an act of direct democracy guaranteed by our constitution."[66]

Even when reviewing measures that contain comparatively broad subjects, the Court has found implicit commonalities linking each provision to a single subject. For

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62 *See Croft*, 236 P.3d At 371-72 & n.2 (noting that neither the Lieutenant Governor nor the sponsors argued that a different standard applies via the statutes to initiatives, than the constitution applies to legislation).
63 *See Yute Air Alaska, Inc.*, at 1181. ("[A]n initiative is an act of direct democracy guaranteed by our constitution. Because petitions are often prepared by inexpert sponsors who nonetheless espouse worthy or popular causes, or both, courts are reluctant to invalidate them in cases of merely doubtful legality.")
64 *Id.* at 1180 (emphasis added).
65 *Id.* at 1181.
66 *Id.*

example, in *Yute Air Alaska, Inc.*, although the Court found that the challenged initiative had a general subject of "transportation," it also found that a "narrower" thread ran through the initiative that made the disparate provisions particularly interrelated: "that regulations and statutes thought to create needless transportation costs should be eliminated." Thus, even when addressing an unusually expansive general subject, the Court has identified "narrower" threads sufficient to unite seemingly disparate provisions.

Accordingly, the Court will affirmatively reject a measure via the single-subject rule only when "the violation is both substantial and plain."[67] The Court explained this elevated standard in *Croft v. Parnell*:

> In ruling on single-subject challenges, we must balance the rule's purpose against the need for efficiency in the legislative process. If the rule were applied too narrowly, statutes might be restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactment[s] and their interrelationships. Our solution has been to construe the single-subject provision [...] with considerable breadth.[68]

Croft, of course, remains the only instance in which the Court invalidated a measure for spanning more than one subject. Yet the initiative at issue in *Croft* clearly failed every meaningful metric the Court has developed to gauge single-subject compatibility. The initiative in *Croft* sought to combine *three* "independent provisions"[69] – a tax on oil production, a "soft dedication" funding a public campaign

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67 *Id.*; *see also Suber*, 414 P.2d at 557.
68 *Croft*, 236 P.3d at 372-373 (internal citations and quotations omitted).
69 *Id.* 374.

financing program, and the allocation of the remainder of these funds to the Permanent Fund Dividend – all of which are impossible to connect via logic or popular understanding, especially given Alaska's constitutional restriction on dedicated funds. The court found that the concerns in *Croft* cut to the very core of the public interest underlying the single subject requirement, i.e., that a popular reform may not be used to conceal and transmit into law an "entirely unrelated"[70] unpopular reform that would not, and ultimately did not, win approval on its own accord. Clearly, such a confluence of disparate, "entirely unrelated"[71] ideas violated the single subject rule in a manner that was "both substantial and plain."[72]

Applying the brand new, stricter standard advocated by the Attorney General would not only impinge on the people's constitutional power of initiative, but would hamstring the legislature's ability to enact legislation in the regular course of business.

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70 *Id.*
71 *Id.*
72 *Id.* at 373 (citations omitted).

If adopted, the Attorney General's new standard could likely be used to invalidate numerous recent bills on such subjects as legislative ethics[73] and criminal justice.[74]

19AKBE is a clearly constitutional initiative addressing the general subject of election reform, with a more specific thread of elevating voter voice and choice. The Supreme Court's precedent makes clear that only where there is no logical or common-sense nexus between the various proposals in an initiative—or there is a clear attempt at log-rolling,[75] namely, the combination of an obviously popular tax proposal with an

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[73] **HB44 "An Act relating to campaign expenditures and contributions; relating to the per diem of members of the legislature; relating to limiting gifts by lobbyists to legislators and legislative employees; requiring a legislator to abstain from taking or withholding official action or exerting official influence that could benefit or harm an immediate family member or certain employers; requiring a legislator to request to be excused from voting in an instance where the legislator may have a financial conflict of interest; and providing for an effective date."** HB44 deals with campaign finance, conflicts of interest, public official travel, and more. The breadth and diversity of HB44 would not pass the new single subject rule proposed by the Attorney General Clarkson. Campaign finance, as the Attorney General stated in his memo to the Lt. Governor, is an important issue central to our democracy. Limiting lobbyist gifts and financial conflicts of interest similarly engender strong opinions and controversy as do the campaign finance measures presented in 19AKBE. To apply the AG's logic to HB44, one could easily image a voter strongly supporting, for example, Section 1 of HB44 amending the definition of expenditures and contributions by foreign-influenced corporations, while also vehemently opposing some of the prohibitions on lobbyist activity in Section 6. Yet the legislature passed HB44 encompassing multiple varied topics relating to constitutional rights such as the freedom of speech implicated in campaign finance. Then-Senator Meyer requested an analysis of any "constitutional issues" with HB44. *See* Exhibit I (March 21, 2018 Legislative Services memo from Legislative Counsel, Daniel Wayne). Tellingly, this memo not only fails to see a violation of the single-subject rule, it *fails to identify a single-subject issue at all*. This, as well as the Attorney General's original memo finding no violation of the single-subject rule (*See* Exhibit E) for the ballot measure upon which HB44 was based, is further confirmation that Attorney General Clarkson's new standard has no basis in law, precedent, or prior practice.

[74] **SB54 - "An Act relating to crime and criminal law; relating to violation of condition of release; relating to sex trafficking; classifying U-47700 as a schedule IA controlled substance; classifying tramadol and related substances as schedule IVA controlled substances; relating to sentencing; relating to imprisonment; relating to parole; relating to probation; relating to driving without a license; establishing a maximum caseload for probation and parole officers; relating to the pretrial services program; relating to the Alaska Criminal Justice Commission; relating to the Alaska Judicial Council; and providing for an effective date."** The AG's standard would also invalidate SB54 under the narrower proposed standard based on the bill's breadth and complexity. A stricter limitation on the single subject rule makes SB54 a law that had once passed under the general guise of a singular, broad subject of "criminal law," but would now be invalidated. SB54 amends multiple criminal statutes including sexual felonies, adds to the list of controlled substances, addresses sentencing guidelines, amends prison inmate characteristics, and much more in 84 sections-all within one piece of legislation.

[75] All three reforms in 19AKBE have substantial public support, and the state has presented zero evidence of log rolling with 19AKBE. This concern– "prevent[ing] the passage of measures lacking popular support by means of log-rolling" – is simply not present. Unlike in *Croft*, where the sponsors obviously attempted to use unrelated popular elements (including the possibility of larger PFDs) to conceal and enact into law an unpopular

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obviously unpopular government program like the measure at issue in *Croft v. Parnell*—will an initiative be invalidated on single-subject grounds.

V. CONCLUSION

ABE is entitled to summary judgment. 19AKBE clearly complies with the Alaska Constitution's single subject rule. Accordingly, the measure should be certified and this Court should immediately order Defendants to distribute petition booklets to the sponsors.

Respectfully submitted this 30th day of September, 2019.

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reform that could not win approval on its own, each individual element of 19AKBE enjoys broad majority support exceeding 65 percent. Undersigned counsel certifies that supporters of 19AKBE performed polling in June 2019 showing strong support for all three components ranging from 66 to 75 percent.

CERTIFICATE OF SERVICE

I hereby certify that on this 30 day of September 2019, a true and correct copy of the foregoing was sent to the following via U.S. Mail and Email:

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ALASKA'S BETTER ELECTIONS INITIATIVE

AN INITIATIVE TO:

PROHIBIT THE USE OF DARK MONEY BY INDEPENDENT EXPENDITURE GROUPS WORKING TO INFLUENCE CANDIDATE ELECTIONS IN ALASKA AND REQUIRE ADDITIONAL DISCLOSURES BY THESE GROUPS; ESTABLISH A NONPARTISAN AND OPEN TOP FOUR PRIMARY ELECTION SYSTEM; CHANGE APPOINTMENT PROCEDURES FOR CERTAIN ELECTION BOARDS AND WATCHERS AND THE ALASKA PUBLIC OFFICES COMMISSION; ESTABLISH A RANKED-CHOICE GENERAL ELECTION SYSTEM; SUPPORT AN AMENDMENT TO THE UNITED STATES CONSTITUTION TO ALLOW CITIZENS TO REGULATE MONEY IN ELECTIONS; REPEAL SPECIAL RUNOFF ELECTIONS; REQUIRE CERTAIN NOTICES IN ELECTION PAMPHLETS AND POLLING PLACES; AND AMEND THE DEFINITION OF POLITICAL PARTY.

A BILL BY INITIATIVE
For an Act Entitled

"An Act prohibiting the use of dark money by independent expenditure groups working to influence candidate elections in Alaska and requiring additional disclosures by these groups; establishing a nonpartisan and open top four primary election system for election to state executive and state and national legislative offices; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; establishing a ranked-choice general election system; supporting an amendment to the United States Constitution to allow citizens to regulate money in Alaska elections; repealing the special runoff election for the office of United States Senator and United States Representative; requiring certain written notices to appear in election pamphlets and polling places; and amending the definition of 'political party'."

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

***Section 1.** The uncodified law of the State of Alaska is amended by adding a section to read: FINDINGS AND INTENT. The People of the State of Alaska find:

(1) It is in the public interest of Alaska to improve the electoral process by increasing transparency, participation, access, and choice.
(2) The people of Alaska hold that political power and influence should not be allocated based on wealth. Instead, reasonable limits on the role of money in elections are necessary to secure the equal rights of Alaskans and to protect the integrity of Alaska elections. Several rulings of the United States Supreme Court have erroneously changed the meaning of the First Amendment to the United States Constitution so as to empower unlimited spending as "free speech" without proper consideration of factors such as the danger of corruption and the undermining of self-governance in Alaska by the undue influence of wealth, including from outside the state. These mistaken Supreme Court decisions have invalidated longstanding anti-corruption laws in Alaska. Alaska shall now affirm the rights and powers of its citizens by prohibiting the use of

dark money in its candidate elections and by supporting an amendment to the United States Constitution allowing citizens to regulate the raising and spending of money in elections.

(3) The people of Alaska have the right to know in a timely manner the source, quantity, timing, and nature of resources used to influence candidate elections in Alaska. This right requires the prompt, accessible, comprehensible, and public disclosure of the true and original sources of funds used to influence these elections, and is essential to the rights of free speech, assembly, and petition guaranteed by the First Amendment to the United States Constitution and shall be construed broadly.

(4) It is in the public interest of Alaska to adopt a primary election system that is open and nonpartisan, which will generate more qualified and competitive candidates for elected office, boost voter turnout, better reflect the will of the electorate, reward cooperation, and reduce partisanship among elected officials.

(5) It is in the public interest of Alaska to adopt a general election system that reflects the core democratic principle of majority rule. A ranked-choice voting system will help ensure that the values of elected officials more broadly reflect the values of the electorate, mitigate the likelihood that a candidate who is disapproved by a majority of voters will get elected, encourage candidates to appeal to a broader section of the electorate, allow Alaskans to vote for the candidates that most accurately reflect their values without risking the election of those candidates that least accurately reflect their values, encourage greater third-party and independent participation in elections, and provide a stronger mandate for winning candidates.

***Sec. 2.** AS 15.10.120(c) is amended to read:

(c) An election supervisor shall appoint one nominee of the political party or political group with the largest number of registered voters at the time of the preceding gubernatorial election [OF WHICH THE GOVERNOR IS A MEMBER] and one nominee of the political party or political group with [THAT RECEIVED] the second largest number of registered voters at the time of [VOTES STATEWIDE IN] the preceding gubernatorial election. However, the election supervisor may appoint a qualified person registered as a member of a third political party or political group or as a nonpartisan or undeclared voter if [IF] a party district committee or state party central committee of the party or group with the largest number of registered voters [OF WHICH THE GOVERNOR IS A MEMBER] or the party or group with [THAT RECEIVED] the second largest number of registered voters at the time of [VOTES STATEWIDE IN] the preceding gubernatorial election fails to present the names prescribed by (b) of this section by April 15 of a regular election year or at least 60 days before a special primary election [, THE ELECTION SUPERVISOR MAY APPOINT ANY QUALIFIED INDIVIDUAL REGISTERED TO VOTE].

***Sec. 3.** AS 15.10.170 is amended to read:

Sec. 15.10.170. Appointment and privileges of watchers. (a) The precinct party committee, where an organized precinct committee exists, or the party district committee where no organized precinct committee exists, or the state party chairperson where neither a precinct nor a party district committee exists, may appoint one or more persons as watchers in each precinct and counting center for any election. Each candidate [NOT REPRESENTING A POLITICAL PARTY] may appoint one or more watchers for each precinct or counting center in the

candidate's respective district or the state for any election. Any organization or organized group that sponsors or opposes an initiative, referendum, or recall may have one or more persons as watchers at the polls and counting centers after first obtaining authorization from the director. A state party chairperson, a precinct party committee, a party district committee, or a candidate [NOT REPRESENTING A POLITICAL PARTY OR ORGANIZATION OR ORGANIZED GROUP] may not have more than one watcher on duty at a time in any precinct or counting center. A watcher must be a United States citizen. The watcher may be present at a position inside the place of voting or counting that affords a full view of all action of the election officials taken from the time the polls are opened until the ballots are finally counted and the results certified by the election board or the data processing review board. The election board or the data processing review board may require each watcher to present written proof showing appointment by the precinct party committee, the party district committee, the organization or organized group, or the candidate the watcher represents [THAT IS SIGNED BY THE CHAIRPERSON OF THE PRECINCT PARTY COMMITTEE, THE PARTY DISTRICT COMMITTEE, THE STATE PARTY CHAIRPERSON, THE ORGANIZATION OR ORGANIZED GROUP, OR THE CANDIDATE REPRESENTING NO PARTY].

(b) In addition to the watchers appointed under (a) of this section, in a primary election or [,] special primary election or special election under AS 15.40.140, [OR SPECIAL RUNOFF ELECTION UNDER AS15.40.141,] each candidate may appoint one watcher in each precinct and counting center.

***Sec. 4.** AS 15.13.020(b) is amended to read:

(b) The governor shall appoint two members of each of the two political parties or political groups with the largest number of registered voters at the time of [WHOSE CANDIDATE FOR GOVERNOR RECEIVED THE HIGHEST NUMBER OF VOTES IN] the most recent preceding general election at which a governor was elected. The two appointees from each of these two parties or groups shall be chosen from a list of four names to be submitted by the central committee of each party or group.

***Sec. 5.** AS 15.13.020(d) is amended to read:

(d) Members of the commission serve staggered terms of five years, or until a successor is appointed and qualifies. The terms of no two members who are members of the same political party or political group may expire in consecutive years. A member may not serve more than one term. However, a person appointed to fill the unexpired term of a predecessor may be appointed to a successive full five-year term.

***Sec. 6.** AS 15.13.040(j)(3) is amended to read:

(3) for all contributions described in (2) of this subsection, the name, address, date, and amount contributed by each contributor, [AND] for all contributions described in (2) of this subsection in excess of $250 in the aggregate during a calendar year, the principal occupation and employer of the contributor, and for all contributions described in (2) of this subsection in excess of $2,000 in the aggregate during a calendar year, the true source of such contributions and all intermediaries, if any, who transferred such funds, and a certification from the treasurer that the report discloses all of the information required by this paragraph.

***Sec. 7.** AS 15.13.040 is amended by adding a new subsection to read:

(s) Every individual, person, nongroup entity, or group that contributes more than $2,000 in the aggregate in a calendar year to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle shall report making the contribution or contributions on a form prescribed by the commission not later than 24 hours after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that entity by that individual, person, nongroup entity, or group during the calendar year. For purposes of this subsection, the reporting contributor is required to report and certify the true sources of the contribution, and intermediaries, if any, as defined by AS 15.13.400(18). This contributor is also required to provide the identity of the true source to the recipient of the contribution simultaneously with providing the contribution itself.

***Sec. 8.** AS 15.13.070 is amended by adding a new subsection to read:

(g) Where contributions are made to a joint campaign for governor and lieutenant governor,

(1) An individual may contribute not more than $1,000 per year; and

(2) A group may contribute not more than $2,000 per year.

***Sec. 9.** AS 15.13.074(b) is amended to read:

(b) A person or group may not make a contribution anonymously, using a fictitious name, or using the name of another. Individuals, persons, nongroup entities, or groups subject to AS 15.13.040(s) may not contribute or accept $2,000 or more of dark money as that term is defined in AS 15.13.400(17), and may not make a contribution while acting as an intermediary without disclosing the true source of the contribution as defined in AS 15.13.400(18).

***Sec. 10.** AS 15.13.074(c) is amended to read:

(c) A person or group may not make a contribution

(1) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 when the office is to be filled at a general election before the date that is 18 months before the general election;

(2) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 for an office that is to be filled at a special election or municipal election before the date that is 18 months before the date of the regular municipal election or that is before the date of the proclamation of the special election at which the candidate or individual seeks election to public office; or

(3) to any candidate later than the 45th day

(A) after the date of the primary or special primary election if the candidate was [ON THE BALLOT AND WAS] not chosen to appear on the general or special election ballot [NOMINATED] at the primary or special primary election; or

(B) after the date of the general or special election, or after the date of a municipal or municipal runoff election.

***Sec. 11.** AS 15.13.090(c) is amended to read:

(c) To satisfy the requirements of (a)(1) of this section and, if applicable, (a)(2)(C) of this section, a communication that includes a print or video component must have the following statement or statements placed in the communication so as to be easily discernible, and in a broadcast, cable, satellite, internet or other digital communication the statement must remain onscreen throughout the entirety of the communication; the second statement is not required if the person paying for the communication has no contributors or is a political party:

> This communication was paid for by (person's name and city and state of principal place of business). The top contributors of (person's name) are (the name and city and state of residence or principal place of business, as applicable, of the largest contributors to the person under AS 15.13.090(a)(2)(C)).

***Sec. 12.** AS 15.13.090 is amended by adding a new subsection to read:

(g) To satisfy the requirements of (a)(1) of this section and, if applicable, (a)(2)(C) of this section, a communication paid for by an outside-funded entity as that term is defined in AS 15.13.400(19) that includes a print or video component must have the following statement placed in the communication so as to be easily discernible, and in a broadcast, cable, satellite, internet or other digital communication the statement must remain onscreen throughout the entirety of the communication; the statement is not required if the outside entity paying for the communication has no contributors or is a political party: "A MAJORITY OF CONTRIBUTIONS TO (OUTSIDE-FUNDED ENTITY'S NAME) CAME FROM OUTSIDE THE STATE OF ALASKA."

***Sec. 13.** AS 15.13.110(f) is amended to read:

(f) During the year in which the election is scheduled, each of the following shall file the campaign disclosure reports in the manner and at the times required by this section:

(1) a person who, under the regulations adopted by the commission to implement AS 15.13.100, indicates an intention to become a candidate for elective state executive or legislative office;

(2) [A PERSON WHO HAS FILED A NOMINATING PETITION UNDER AS15.25.140 - 15.25.200 TO BECOME A CANDIDATE AT THE GENERAL ELECTION FOR ELECTIVE STATE EXECUTIVE OR LEGISLATIVE OFFICE;

(3)] a person who campaigns as a write-in candidate for elective state executive or legislative office at the general election; and

(3) [(4)] a group or nongroup entity that receives contributions or makes expenditures on behalf of or in opposition to a person described in (1) or (2) [(1) - (3)] of this subsection, except as provided for certain independent expenditures by nongroup entities in AS 15.13.135(a).

***Sec. 14.** AS 15.13.110 is amended by adding a new subsection to read:

(k) Once contributions from an individual, person, nongroup entity, or group to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle exceed $2,000 in a single year, that entity shall report that contribution, and all subsequent contributions, not later than 24 hours after receipt. For purposes of this subsection, the entity is required to certify and report the true source, and all intermediaries if any, of the contribution as defined by AS 15.13.400(18).

***Sec. 15.** AS 15.13.390(a) is amended to read:

(1) A person who fails to register when required by AS 15.13.050(a) or who fails to file a properly completed and certified report within the time required by AS 15.13.040, 15.13.060(b) — (d), 15.13.110(a)(1), (3), or (4), (e), or (f) is subject to a civil penalty of not more than $50 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not more than $500 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court;

(2) A person who, whether as a contributor or intermediary, delays in reporting a contribution as required by AS 15.13.040(s) is subject to a civil penalty of not more than $1,000 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court;

(3) A person who, whether as a contributor or intermediary, misreports or fails to disclose the true source of a contribution in violation of AS 15.13.040(s) or AS 15.13.074(b) is subject to a civil penalty of not more than the amount of the contribution that is the subject of the misreporting or failure to disclose. Upon a showing that the violation was intentional, a civil penalty of not more than three times the amount of the contribution in violation may be imposed. These penalties as determined by the commission are subject to right of appeal to the superior court;

(4) A person who violates a provision of this chapter, except [A PROVISION REQUIRING REGISTRATION OR FILING OF A REPORT WITHIN A TIME REQUIRED] as otherwise specified in this section, is subject to a civil penalty of not more than $50 a day for each day the violation continues as determined by the commission, subject to right of appeal to the superior court[.]; and

(5) An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed. However, the imposition of the penalties prescribed in this section or in AS 15.13.380 does not excuse that person from registering or filing reports required by this chapter.

***Sec. 16.** AS 15.13.400(4) is amended to read:

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made, and includes the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that is rendered to the candidate or political party, and that is made for the purpose of

(i) influencing the nomination or election of a candidate;

(ii) influencing a ballot proposition or question; or

(iii) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020;

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing members of the party running as candidates for public office in that election [THE PARTY'S SLATE OF CANDIDATES FOR ELECTION], which may include photographs, biographies, and information about the [PARTY'S] candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee;

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party; or

(vii) an opportunity to participate in a candidate forum provided to a candidate without compensation to the candidate by another person and for which a candidate is not ordinarily charged;

***Sec. 17.** AS 15.13.400 is amended by adding a new paragraph to read:

(17) "dark money" means a contribution whose source or sources, whether from wages, investment income, inheritance, or revenue generated from selling goods or services, is not disclosed to the public. Notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than $2,000 per person per year, the organization itself shall be considered the true source.

***Sec. 18.** AS 15.13.400 is amended by adding a new paragraph to read:

(18) "true source" means the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services. A person or legal entity who derived funds via contributions, donations, dues, or gifts is not the true source, but rather an intermediary for the true source. Notwithstanding the foregoing, to

the extent a membership organization receives dues or contributions of less than $2,000 per person per year, the organization itself shall be considered the true source.

***Sec. 19.** AS 15.13.400 is amended by adding a new paragraph to read:

(19) "outside-funded entity" means an entity that makes one or more independent expenditures in one or more candidate elections and that, during the previous 12-month period, received more than 50 percent of its aggregate contributions from true sources, or their equivalents, who, at the time of the contribution, resided or had their principal place of business outside Alaska.

***Sec. 20.** AS 15.15 is amended by adding a new section to read:

Sec. 15.15.005. Top four nonpartisan open primary. A voter qualified under AS 15.05 may cast a vote for any candidate for each elective state executive and state and national legislative office, without limitations based on the political party or political group affiliation of either the voter or the candidate.

***Sec. 21.** AS 15.15.030(5) is amended to read:

(5) The names of the candidates [AND THEIR PARTY DESIGNATIONS] shall be placed in separate sections on the state general election ballot under the office designation to which they were nominated. If a candidate is registered as affiliated with a political party or political group, the [THE] party affiliation, if any, may [SHALL] be designated after the name of the candidate, upon request of the candidate. If a candidate has requested designation as nonpartisan or undeclared, that designation shall be placed after the name of the candidate. If a candidate is not registered as affiliated with a political party or political group and has not requested to be designated as nonpartisan or undeclared, the candidate shall be designated as undeclared. The lieutenant governor and the governor shall be included under the same section. Provision shall be made for voting for write-in [AND NO-PARTY] candidates within each section. Paper ballots for the state general election shall be printed on white paper.

***Sec. 22.** AS 15.15.030 is amended by adding new paragraphs to read:

(14) The director shall include the following statement on the ballot:

> A candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or group or that the party or group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the political party or political group.

(15) Instead of the statement provided by (14) of this section, when candidates for President and Vice-President of the United States appear on a general election ballot, the director shall include the following statement on the ballot:

> A candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or political group or that the political party or political group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the party or group. The election for President and Vice-President of the United States is different. Some candidates for President and Vice-President are the official nominees of their political party.

(16) The director shall design the general election ballots so that the candidates are selected by ranked-choice voting.

(17) The director shall design the general election ballot to direct the voter to mark candidates in order of preference and to mark as many choices as the voter wishes, but not to assign the same ranking to more than one candidate for the same office.

***Sec. 23.** AS 15.15.060 is amended by adding a new subsection to read:

(e) In each polling place, the director shall require to be posted, in a location conspicuous to a person who will be voting, the following notice, written in bold:

> A candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or group or that the party or group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the party or group.

***Sec. 24.** AS 15.15.350 is amended by adding new subsections to read:

(c) All general elections shall be conducted by ranked-choice voting.

(d) When counting ballots in a general election, the election board shall initially tabulate each validly cast ballot as one vote for the highest-ranked continuing candidate on that ballot or as an inactive ballot. If a candidate is highest-ranked on more than one-half of the active ballots, that candidate is elected and the tabulation is complete. Otherwise, tabulation proceeds in sequential rounds as follows:

(1) if two or fewer continuing candidates remain, the candidate with the greatest number of votes is elected and the tabulation is complete; otherwise, the tabulation continues under (2) of this subsection;

(2) the candidate with the fewest votes is defeated, votes cast for the defeated candidate shall cease counting for the defeated candidate and shall be added to the totals of each ballot's next-highest-ranked continuing candidate or considered an inactive ballot under (g)(2) of this section, and a new round begins under (1) of this subsection.

(e) When counting general election ballots,

(1) a ballot containing an overvote shall be considered an inactive ballot once the overvote is encountered at the highest ranking for a continuing candidate;

(2) if a ballot skips a ranking, then the election board shall count the next ranking. If the next ranking is another skipped ranking, the ballot shall be considered an inactive ballot once the second skipped ranking is encountered; and

(3) In the event of a tie between the final two continuing candidates, the procedures in AS 15.15.460 and AS 15.20.430 - 15.20.530 shall apply to determine the winner of the general election. In the event of a tie between two candidates with the fewest votes, the tie shall be resolved by lot to determine which candidate is defeated.

(f) The election board may not count an inactive ballot for any candidate.

(g) In this section,

(1) "continuing candidate" means a candidate who has not been defeated;

(2) "inactive ballot" means a ballot that is no longer tabulated, either in whole or in part, by the division because it does not rank any continuing candidate, contains an

overvote at the highest continuing ranking, or contains two or more sequential skipped rankings before its highest continuing ranking;

(3) "overvote" means an instance where a voter has assigned the same ranking to more than one candidate;

(4) "ranking" or "ranked" means the number assigned by a voter to a candidate to express the voter's choice for that candidate; a ranking of "1" is the highest ranking, followed by "2," and then "3," and so on;

(5) "round" means an instance of the sequence of voting tabulation in a general election;

(6) "skipped ranking" means a blank ranking on a ballot on which a voter has ranked another candidate at a subsequent ranking.

***Sec. 25.** AS 15.15.360(a) is amended to read:

(a) The election board shall count ballots according to the following rules:

(1) A voter may mark a ballot only by filling in, making "X" marks, diagonal, horizontal, or vertical marks, solid marks, stars, circles, asterisks, checks, or plus signs that are clearly spaced in the oval opposite the name of the candidate, proposition, or question that the voter desires to designate. In a general election, a voter may mark a ballot that requires the voter to vote for candidates in order of ranked preference by the use of numerals that are clearly spaced in one of the ovals opposite the name of the candidate that the voter desires to designate.

(2) A failure to properly mark a ballot as to one or more candidates does not itself invalidate the entire ballot.

(3) [IF A VOTER MARKS FEWER NAMES THAN THERE ARE PERSONS TO BE ELECTED TO THE OFFICE, A VOTE SHALL BE COUNTED FOR EACH CANDIDATE PROPERLY MARKED.

(4) [(5)] The mark specified in (1) of this subsection shall be counted only if it is substantially inside the oval provided, or touching the oval so as to indicate clearly that the voter intended the particular oval to be designated.

(5) [(6)] Improper marks on the ballot may not be counted and do not invalidate marks for candidates properly made.

(6) [(7)] An erasure or correction invalidates only that section of the ballot in which it appears.

(7) [(8)] A vote marked for the candidate for President or Vice-President of the United States is considered and counted as a vote for the election of the presidential electors.

(9) [REPEALED]

(10) [REPEALED]

(11) [REPEALED]

(12) [REPEALED]

***Sec. 26.** AS 15.15.370 is amended to read:

Sec. 15.15.370. Completion of ballot count; certificate. When the count of ballots is completed, and in no event later than the day after the election, the election board shall make a certificate in duplicate of the results. The certificate includes the number of votes cast for

each candidate, including, for a candidate in a general election, the number of votes at each round of the ranked-choice tabulation process under AS 15.15.350, and the number of votes for and against each proposition, yes or no on each question, and any additional information prescribed by the director. The election board shall, immediately upon completion of the certificate or as soon thereafter as the local mail service permits, send in one sealed package to the director one copy of the certificate and the register. In addition, all ballots properly cast shall be mailed to the director in a separate, sealed package. Both packages, in addition to an address on the outside, shall clearly indicate the precinct from which they come. Each board shall, immediately upon completion of the certification and as soon thereafter as the local mail service permits, send the duplicate certificate to the respective election supervisor. The director may authorize election boards in precincts in those areas of the state where distance and weather make mail communication unreliable to forward their election results by telephone, telegram, or radio. The director may authorize the unofficial totaling of votes on a regional basis by election supervisors, tallying the votes as indicated on duplicate certificates. To ensure [ASSURE] adequate protection, the director shall prescribe the manner in which the ballots, registers, and all other election records and materials are thereafter preserved, transferred, and destroyed.

***Sec. 27.** AS 15.15.450 is amended to read:

Sec. 15.15.450. Certification of state ballot counting review. Upon completion of the state ballot counting review, the director shall certify the person receiving the largest number of votes for the office for which that person was nominated or elected, as applicable, [A CANDIDATE AS ELECTED TO THAT OFFICE] and shall certify the approval of a justice or judge not rejected by a majority of the voters voting on the question. The director shall issue to the elected candidates and approved justices and judges a certificate of their election or approval. The director shall also certify the results of a proposition and other question except that the lieutenant governor shall certify the results of an initiative, referendum, or constitutional amendment.

***Sec. 28.** AS 15.20.081(a) is amended to read:

(a) A qualified voter may apply in person, by mail, or by facsimile, scanning, or other electronic transmission to the director for an absentee ballot under this section. Another individual may apply for an absentee ballot on behalf of a qualified voter if that individual is designated to act on behalf of the voter in a written general power of attorney or a written special power of attorney that authorizes the other individual to apply for an absentee ballot on behalf of the voter. The application must include the address or, if the application requests delivery of an absentee ballot by electronic transmission, the telephone electronic transmission number, to which the absentee ballot is to be returned, the applicant's full Alaska residence address, and the applicant's signature. However, a person residing outside the United States and applying to vote absentee in federal elections in accordance with AS 15.05.011 need not include an Alaska residence address in the application. A person may supply to a voter an absentee ballot application form with a political party or group affiliation indicated only if the voter is already registered as affiliated with the political party or group indicated. [ONLY THE VOTER OR THE INDIVIDUAL DESIGNATED BY THE VOTER IN A WRITTEN POWER OF ATTORNEY UNDER THIS SUBSECTION MAY MARK THE VOTER'S CHOICE OF PRIMARY BALLOT ON AN

APPLICATION. A PERSON SUPPLYING AN ABSENTEE BALLOT APPLICATION FORM MAY NOT DESIGN OR MARK THE APPLICATION IN A MANNER THAT SUGGESTS CHOICE OF ONE BALLOT OVER ANOTHER, EXCEPT THAT BALLOT CHOICES MAY BE LISTED ON AN APPLICATION AS AUTHORIZED BY THE DIVISION.] The application must be made on a form prescribed or approved by the director. The voter or registration official shall submit the application directly to the division of elections. For purposes of this subsection, "directly to the division of elections" means that an application may not be submitted to any intermediary that could control or delay the submission of the application to the division or gather data on the applicant from the application form. However, nothing in this subsection is intended to prohibit a voter from giving a completed absentee ballot application to a friend, relative, or associate for transfer to the United States Postal Service or a private commercial delivery service for delivery to the division.

***Sec. 29.** AS 15.20.081(h) is amended to read:

(h) Except as provided in AS 15.20.480, an absentee ballot returned by mail from outside the United States or from an overseas voter qualifying under AS 15.05.011 that has been marked and mailed not later than election day may not be counted unless the ballot is received by the election supervisor not later than the close of business on the

(1) 10th day following a primary election or special **primary** election under AS 15.40.140; or

(2) 15th day following a general election [, SPECIAL RUNOFF ELECTION,] or special election, other than a special **primary** election described in (1) of this subsection.

***Sec. 30.** AS 15.20.190(a) is amended to read:

(a) Thirty days before the date of an election, the election supervisors shall appoint, in the same manner provided for the appointment of election officials prescribed in AS 15.10, district absentee ballot counting boards and district questioned ballot counting boards, each composed of at least four members. At least one member of each board must be a member of the same political party or political group with the largest number of registered voters at the time of the preceding gubernatorial election [OF WHICH THE GOVERNOR IS A MEMBER], and at least one member of each board must be a member of the political party or political group with the second largest number of registered voters at the time of [WHOSE CANDIDATE FOR GOVERNOR RECEIVED THE SECOND LARGEST NUMBER OF VOTES IN] the preceding gubernatorial election. The district boards shall assist the election supervisors in counting the absentee and questioned ballots and shall receive the same compensation paid election officials under AS 15.15.380.

***Sec. 31.** AS 15.20.203(i) is amended to read:

(i) The director shall mail the materials described in (h) of this section to the voter not later than

(1) 10 days after completion of the review of ballots by the state review board for a primary election [,] or [FOR] a special **primary** election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION];

(2) 60 days after certification of the results of a general election [,SPECIAL RUNOFF ELECTION,] or special election other than a special **primary** election described in (1) of this subsection.

***Sec. 32.** AS 15.20.203(j) is amended to read:

(j) The director shall make available through a free access system to each absentee voter a system to check to see whether the voter's ballot was counted and, if not counted, the reason why the ballot was not counted. The director shall make this information available through the free access system not less than

(1) 10 days after certification of the results of a primary election [,] or a special **primary** election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION]; and

(2) 30 days after certification of the results of a general or special election, other than a special **primary** election described in (1) of this subsection.

***Sec. 33.** AS 15.20.207(i) is amended to read:

(i) The director shall mail the materials described in (h) of this section to the voter not later than

(1) 10 days after completion of the review of ballots by the state review board for a primary election [,] or [FOR] a special **primary** election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION];

(2) 60 days after certification of the results of a general or special election, other than a special **primary** election described in (1) of this subsection.

***Sec. 34.** AS 15.20.207(k) is amended to read:

(k) The director shall make available through a free access system to each voter voting a questioned ballot a system to check to see whether the voter's ballot was counted and, if not counted, the reason why the ballot was not counted. The director shall make this information available through the free access system not less than

(1) 10 days after certification of the results of a primary election [,] or a special **primary** election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION]; and

(2) 30 days after [THE] certification of the results of a general or special election, other than a special **primary** election described in (1) of this subsection.

***Sec. 35.** AS 15.20.211(d) is amended to read:

(d) The director shall mail the materials described in (c) of this section to the voter not later than

(1) 10 days after completion of the review of ballots by the state review board for a primary election [,] or [FOR] a special **primary** election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION];

(2) 60 days after certification of the results of a general or special election, other than a special **primary** election described in (1) of this subsection.

***Sec. 36.** AS 15.20.211(f) is amended to read:

(f) The director shall make available through a free access system to each voter whose ballot was subject to partial counting under this section a system to check to see whether the voter's ballot was partially counted and, if not counted, the reason why the ballot was not counted. The director shall make this information available through the free access system not less than

(1) 10 days after certification of the results of a primary election [,] or a special **primary** election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION]; and

(2) 30 days after [THE] certification of the results of a general or special election, other than a special **primary** election described in (1) of this subsection.

***Sec. 37.** AS 15.25.010 is amended to read:

Sec. 15.25.010. Provision for primary election. Candidates for the elective state executive and state and national legislative offices shall be nominated in a primary election by direct vote of the people in the manner prescribed by this chapter. The primary election does not serve to determine the nominee of a political party or political group but serves only to narrow the number of candidates whose names will appear on the ballot at the general election. Except as provided in AS 15.25.100(d), only the four candidates who receive the greatest number of votes for any office shall advance to the general election [THE DIRECTOR SHALL PREPARE AND PROVIDE A PRIMARY ELECTION BALLOT FOR EACH POLITICAL PARTY. A VOTER REGISTERED AS AFFILIATED WITH A POLITICAL PARTY MAY VOTE THAT PARTY'S BALLOT. A VOTER REGISTERED AS NONPARTISAN OR UNDECLARED RATHER THAN AS AFFILIATED WITH A PARTICULAR POLITICAL PARTY MAY VOTE THE POLITICAL PARTY BALLOT OF THE VOTER'S CHOICE UNLESS PROHIBITED FROM DOING SO UNDER AS 15.25.014. A VOTER REGISTERED AS AFFILIATED WITH A POLITICAL PARTY MAY NOT VOTE THE BALLOT OF A DIFFERENT POLITICAL PARTY UNLESS PERMITTED TO DO SO UNDER AS 15.25.014].

***Sec. 38.** AS 15.25.030(a) is amended to read:

(a) A person [MEMBER OF A POLITICAL PARTY] who seeks to become a candidate [OF THE PARTY] in the primary election or a special primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and must state in substance

(1) the full name of the candidate;

(2) the full mailing address of the candidate;

(3) if the candidacy is for the office of state senator or state representative, the house or senate district of which the candidate is a resident;

(4) the office for which the candidate seeks nomination;

(5) the [NAME OF THE] political party or political group with whom the candidate is registered as affiliated, or whether the candidate would prefer a nonpartisan or undeclared designation placed after the candidate's name on the ballot [OF WHICH THE PERSON IS A CANDIDATE FOR NOMINATION];

(6) the full residence address of the candidate, and the date on which residency at that address began;

(7) the date of the primary election or special primary election at which the candidate seeks nomination;

(8) the length of residency in the state and in the district of the candidate;

(9) that the candidate will meet the specific citizenship requirements of the office for which the person is a candidate;

(10) that the candidate is a qualified voter as required by law;

(11) that the candidate will meet the specific age requirements of the office for which the person is a candidate; if the candidacy is for the office of state representative, that the candidate will be at least 21 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of state senator, that the candidate will be at least 25 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of governor or lieutenant governor, that the candidate will be at least 30 years of age on the first Monday in December following election or, if the office is to be filled by special election under AS 15.40.230 - 15.40.310, that the candidate will be at least 30 years of age on the date of certification of the results of the special election; or, for any other office, by the time that the candidate, if elected, is sworn into office;

(12) that the candidate requests that the candidate's name be placed on the primary or special primary election ballot;

(13) that the required fee accompanies the declaration;

(14) that the person is not a candidate for any other office to be voted on at the primary or general election and that the person is not a candidate for this office under any other declaration of candidacy or nominating petition;

(15) the manner in which the candidate wishes the candidate's name to appear on the ballot;

(16) if the candidacy is for the office of the governor, the name of the candidate for lieutenant governor running jointly with the candidate for governor; and

(17) if the candidacy is for the office of lieutenant governor, the name of the candidate for governor running jointly with the candidate for lieutenant governor.

[(16) THAT THE CANDIDATE IS REGISTERED TO VOTE AS A MEMBER OF THE POLITICAL PARTY WHOSE NOMINATION IS BEING SOUGHT].

***Sec. 39.** AS 15.25.060 is repealed and reenacted to read:

Sec. 15.25.060. Preparation and distribution of ballots. The primary election ballots shall be prepared and distributed by the director in the manner prescribed for general election ballots except as specifically provided otherwise for the primary election. The director shall prepare and provide a primary election ballot that contains all of the candidates for elective state executive and state and national legislative offices and all of the ballot titles and propositions required to appear on the ballot at the primary election. The director shall print the ballots on white paper and place the names of all candidates who have properly filed in groups according to offices. The order of the placement of the names for each office shall be as provided for the general election ballot. Blank spaces may not be provided on the ballot for the writing or pasting in of names.

***Sec. 40.** AS 15.25.100 is repealed and reenacted to read:

Sec. 15.25.100. Placement of candidates on general election ballot. (a) Except as provided in (b)-(g) of this section, of the names of candidates that appear on the primary

election ballot under AS 15.25.010, the director shall place on the general election ballot only the names of the four candidates receiving the greatest number of votes for an office. For purposes of this subsection and (b) of this section, candidates for lieutenant governor and governor are treated as a single paired unit.

(b) If two candidates tie in having the fourth greatest number of votes for an office in the primary election, the director shall determine under (g) of this section which candidate's name shall appear on the general election ballot.

(c) Except as otherwise provided in (d) of this section, if a candidate nominated at the primary election dies, withdraws, resigns, becomes disqualified from holding office for which the candidate is nominated, or is certified as being incapacitated in the manner prescribed by this section after the primary election and 64 days or more before the general election, the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.

(d) If the withdrawn, resigned, deceased, disqualified, or incapacitated candidate was a candidate for governor or lieutenant governor, the replacement candidate is selected by the following process:

(1) if the withdrawn, resigned, deceased, disqualified, or incapacitated candidate was the candidate for governor, that candidate's lieutenant governor running mate becomes the candidate for governor, thereby creating a vacancy for the lieutenant governor candidate;

(2) when any vacancy for the lieutenant governor candidate occurs, the candidate for governor shall select a qualified running mate to be the lieutenant governor candidate and notify the director of that decision.

(e) The director shall place the name of the persons selected through this process as candidates for governor and lieutenant governor on the general election ballot.

(f) For a candidate to be certified as incapacitated under (c) of this section, a panel of three licensed physicians, not more than two of whom may be of the same party, shall provide the director with a sworn statement that the candidate is physically or mentally incapacitated to an extent that would, in the panel's judgment, prevent the candidate from active service during the term of office if elected.

(g) If the director is unable to make a determination under this section because the candidates received an equal number of votes, the determination may be made by lot under AS 15.20.530.

***Sec. 41.** AS 15.25.105(a) is amended to read:

(a) If a candidate does not appear on the primary election ballot or is not successful in advancing to the general election and wishes to be a candidate in the general election, the candidate may file as a write-in candidate. Votes for a write-in candidate may not be counted unless that candidate has filed a letter of intent with the director stating

(1) the full name of the candidate;

(2) the full residence address of the candidate and the date on which residency at that address began;

(3) the full mailing address of the candidate;

(4) the [NAME OF THE] political party or political group <u>with whom the candidate is registered as affiliated, or whether the candidate would prefer a</u>

nonpartisan or undeclared designation, [OF WHICH THE CANDIDATE IS A MEMBER, IF ANY];

(5) if the candidate is for the office of state senator or state representative, the house or senate district of which the candidate is a resident;

(6) the office that the candidate seeks;

(7) the date of the election at which the candidate seeks election;

(8) the length of residency in the state and in the house district of the candidate;

(9) the name of the candidate as the candidate wishes it to be written on the ballot by the voter;

(10) that the candidate meets the specific citizenship requirements of the office for which the person is a candidate;

(11) that the candidate will meet the specific age requirements of the office for which the person is a candidate; if the candidacy is for the office of state representative, that the candidate will be at least 21 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of state senator, that the candidate will be at least 25 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of governor or lieutenant governor, that the candidate will be at least 30 years of age on the first Monday in December following election or, if the office is to be filled by special election under AS 15.40.230 - 15.40.310, that the candidate will be at least 30 years of age on the date of certification of the results of the special election; or, for any other office, by the time that the candidate, if elected, is sworn into office;

(12) that the candidate is a qualified voter as required by law; and

(13) that the candidate is not a candidate for any other office to be voted on at the general election and that the candidate is not a candidate for this office under any other nominating petition or declaration of candidacy.

***Sec. 42.** AS 15.25.105(b) is amended to read:

(b) If a write-in candidate is running for the office of governor, the candidate must file a joint letter of intent together with a candidate for lieutenant governor. [BOTH CANDIDATES MUST BE OF THE SAME POLITICAL PARTY OR GROUP.]

***Sec. 43.** AS 15.30.010 is amended to read:

Sec. 15.30.010. Provision for selection of electors. Electors of President and Vice President of the United States are selected by election at the general election in presidential election years[.] , in the manner and as determined by the ranked-choice method of tabulating votes described in AS 15.15.350—15.15.370.

***Sec. 44.** AS 15.40.140 is amended to read:

Sec. 15.40.140. Condition of calling special primary election and special election. When a vacancy occurs in the office of United States senator or United States representative, the governor shall, by proclamation, call a special primary election to be held on a date not less

than 60, nor more than 90, days after the date the vacancy occurs, to be followed by a special election on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election [UNDER AS 15.40.142(a)]. However, in an election year in which a candidate for that office is not regularly elected, if the vacancy occurs on a date that is **not** less than 60, nor more than 90, days before [OR IS ON OR AFTER] the date of

(1) the primary election, the [IN THE GENERAL ELECTION YEAR DURING WHICH A CANDIDATE TO FILL THE OFFICE IS REGULARLY ELECTED, THE GOVERNOR MAY NOT CALL A] special **primary** election shall be held on the date of the primary election with the subsequent special election to be held on the date of the general election; or

(2) the general election, the special primary election shall be held on the date of the general election with the subsequent special election to be held on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary and general election.

***Sec. 45.** AS 15.40.160 is amended to read:

Sec. 15.40.160. Proclamation. The governor shall issue the proclamation calling the special primary election and special election at least 50 days before the

[(1)] special **primary** election [; AND

(2) IF A SPECIAL RUNOFF ELECTION IS REQUIRED UNDER AS 15.40.141(a), SPECIAL RUNOFF ELECTION].

***Sec. 46.** AS 15.40.165 is amended to read:

Sec. 15.40.165. Term of elected senator. At the special election, [OR, AS PROVIDED BY AS 15.40.141, AT THE SPECIAL RUNOFF ELECTION,] a United States senator shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States Senate meets, convenes, or reconvenes following the certification of the results of the special election [OR SPECIAL RUNOFF ELECTION] by the director.

***Sec. 47.** AS 15.40.170 is amended to read:

Sec. 15.40.170. Term of elected representative. At the special election, [OR, AS PROVIDED BY AS 15.40.141, AT THE SPECIAL RUNOFF ELECTION,] a United States representative shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States house of representatives meets, convenes, or reconvenes following the certification of the results of the special election [OR SPECIAL RUNOFF ELECTION] by the director.

***Sec. 48.** AS 15.40.190 is amended to read:

Sec. 15.40.190. Requirements of petition for [NO-PARTY] candidates. Petitions for the nomination of candidates must be executed under oath. [NOT REPRESENTING A POLITICAL PARTY SHALL BE SIGNED BY QUALIFIED VOTERS OF THE STATE EQUAL IN NUMBER TO AT LEAST ONE PERCENT OF THE NUMBER OF VOTERS WHO CAST BALLOTS IN THE PRECEDING GENERAL ELECTION AND SHALL] state in substance that which is required for a declaration of candidacy

under AS 15.25.030, and include the fee required under AS 15.25.050(a) [NOMINATION PETITIONS BY AS 15.25.180].

*Sec. 49. AS 15.40.220 is amended to read:

Sec. 15.40.220. General provisions for conduct of the special primary election and special [RUNOFF] election. Unless specifically provided otherwise, all provisions regarding the conduct of the primary election and general election shall govern the conduct of the special primary election and [THE] special [RUNOFF] election of the United States senator or United States representative, including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; [PROVISION FOR RUNNING AS, VOTING FOR, AND COUNTING BALLOTS FOR A WRITE-IN CANDIDATE;] provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

*Sec. 50. AS 15.40.230 is amended to read:

Sec. 15.40.230. Condition and time of calling special primary election and special election. When a person appointed to succeed to the office of lieutenant governor succeeds to the office of acting governor, the acting governor shall, by proclamation, call a special primary election to be held on a date not less than 60, nor more than 90, days after the date the vacancy in the office of the governor occurred and a subsequent special election to be held on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election. However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in years in which a governor is regularly elected, the acting governor shall serve the remainder of the unexpired term and may not call a special election.

*Sec. 51. AS 15.40.240 is amended to read:

Sec. 15.40.240. Conditions for holding special primary election and special election with primary or general election. If the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary election in an election year in which a governor is not regularly elected, the acting governor shall, by proclamation, call the special primary election to be held on the date of the primary election and the special election to be held on the date of the general election, [IN YEARS IN WHICH A GOVERNOR IS REGULARLY ELECTED] or, if the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the [PRIMARY ELECTION OR] general election in election years in which a governor is not regularly elected, the acting governor shall, by proclamation, call the special primary election to be held on the date of the [PRIMARY ELECTION OR] general election with the subsequent special election to be held on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary and general election.

*Sec. 52. AS 15.40.250 is amended to read:

Sec. 15.40.250. Proclamation of special primary election and special election. The acting governor shall issue the proclamation calling the special primary election and special election at least 50 days before the special primary election.

***Sec. 53.** AS 15.40.280 is amended to read:

Sec. 15.40.280. Requirements of petition for [NO-PARTY] candidates. Petitions for the nomination of candidates must be executed under oath. [NOT REPRESENTING A POLITICAL PARTY SHALL BE SIGNED BY QUALIFIED VOTERS OF THE STATE EQUAL IN NUMBER TO AT LEAST ONE PERCENT OF THE NUMBER OF VOTERS WHO CAST BALLOTS IN THE PRECEDING GENERAL ELECTION, SHALL INCLUDE NOMINEES FOR THE OFFICE OF GOVERNOR AND LIEUTENANT GOVERNOR, AND SHALL] state in substance that which is required for a declaration of candidacy under AS 15.25.030, and include the fee required under AS 15.25.050(a) [NOMINATION PETITIONS BY AS 15.25.180].

***Sec. 54.** AS 15.40.310 is amended to read:

Sec. 15.40.310. General provisions for conduct of the special primary election and special election. Unless specifically provided otherwise, all provisions regarding the conduct of the primary and general election shall govern the conduct of the special primary election and special election of the governor and lieutenant governor, including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

***Sec. 55.** AS 15.40.330 is amended to read:

Sec. 15.40.330. Qualification and confirmation of appointee. (a) The appointee shall meet the qualifications of a member of the legislature as prescribed in Sec. 2, art. II, of the state constitution, and, if the predecessor in office was a member of a political party or political group at the time of the vacancy, (1) shall be a member of the same political party or political group as [THAT WHICH NOMINATED] the predecessor in office; [,] and (2) shall be subject to confirmation by a majority of the members of the legislature who are members of the same political party or political group as [WHICH NOMINATED] the predecessor in office and of the same house as was the predecessor in office. If the predecessor in office was not a member of [NOMINATED BY] a political party or political group at the time of the vacancy or, if no other member of the predecessor's political party or political group is a member of the predecessor's house of the legislature, the governor may appoint any qualified person. If the appointee is not a member of a political party or political group, as provided in (b) of this section, the appointment is not subject to confirmation. If the appointee is a member of a political party or political group, the appointment is subject to confirmation as provided by (b) of this section for the confirmation of political party or political group appointees.

(b) A member of a political party or political group is a person who supports the political program of a political party or political group. The absence of a political party or political group designation after a candidate's name on an election ballot [FILING FOR OFFICE OF A

CANDIDATE AS AN INDEPENDENT OR NO-PARTY CANDIDATE] does not preclude a candidate from being a member of a political party or political group. Recognition of a [AN INDEPENDENT OR NO-PARTY] candidate as a member of a political party or political group caucus of members of the legislature at the legislative session following the election of the [INDEPENDENT OR NO-PARTY] candidate is recognition of that person's political party or political group membership for the purposes of confirmation under this section [AT THE TIME FILINGS WERE MADE BY PARTY CANDIDATES FOR THE PRECEDING GENERAL ELECTION].

*Sec. 56. AS 15.40.380 is amended to read:

Sec. 15.40.380. Conditions for part-term senate appointment and special election. If the vacancy is for an unexpired senate term of more than two years and five full calendar months, the governor shall call a special primary election and a special election by proclamation, and the appointment shall expire on the date the state senate first convenes or reconvenes following the certification of the results of the special election by the director.

*Sec. 57. AS 15.40.390 is amended to read:

Sec. 15.40.390. Date of special primary election and special election. The special primary election to fill a vacancy in the state senate shall be held on the date of the first primary [GENERAL] election held more than 60 days [THREE FULL CALENDAR MONTHS] after the senate vacancy occurs, and the special election shall be held on the date of the first general election thereafter.

*Sec. 58. AS 15.40.400 is amended to read:

Sec. 15.40.400. Proclamation of special primary election and special election. The governor shall issue the proclamation calling the special primary election and special election at least 50 days before the special primary election.

*Sec. 59. AS 15.40.440 is amended to read:

Sec. 15.40.440. Requirements of petition for [NO-PARTY] candidates. Petitions for the nomination of candidates [NOT REPRESENTING A POLITICAL PARTY SHALL BE SIGNED BY QUALIFIED VOTERS EQUAL IN NUMBER TO AT LEAST ONE PERCENT OF THE NUMBER OF VOTERS WHO CAST BALLOTS IN THE PROPOSED NOMINEE'S RESPECTIVE HOUSE OR SENATE DISTRICT IN THE PRECEDING GENERAL ELECTION. A NOMINATING PETITION MAY NOT CONTAIN LESS THAN 50 SIGNATURES FOR ANY DISTRICT, AND] must be executed under oath, state in substance that which is required in a declaration of candidacy under AS 15.25.030, and include the fee required under AS 15.25.050(a) [PETITIONS FOR NOMINATION BY AS 15.25.180].

*Sec. 60. AS 15.40.470 is amended to read:

Sec. 15.40.470. General provision for conduct of the special primary election and special election. Unless specifically provided otherwise, all provisions regarding the conduct of the primary election and general election shall govern the conduct of the special primary election and special election of state senators, including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from

work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

***Sec. 61.** AS 15.45.190 is amended to read:

Sec. 15.45.190. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide general, special, special primary [RUNOFF], or primary election that is held after

(1) the petition has been filed;

(2) a legislative session has convened and adjourned; and

(3) a period of 120 days has expired since the adjournment of the legislative session.

***Sec. 62.** AS 15.45.420 is amended to read:

Sec. 15.45.420. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot for the first statewide general, special, special primary [RUNOFF], or primary election held more than 180 days after adjournment of the legislative session at which the act was passed.

***Sec. 63.** AS 15.58.010 is amended to read:

Sec. 15.58.010. Election pamphlet. Before each state general election, and before each state primary, special, or special primary [RUNOFF] election at which a ballot proposition is scheduled to appear on the ballot, the lieutenant governor shall prepare, publish, and mail at least one election pamphlet to each household identified from the official registration list. The pamphlet shall be prepared on a regional basis as determined by the lieutenant governor.

***Sec. 64.** AS 15.58.020(a) is amended by adding a new paragraph to read:

(13) the following statement written in bold in a conspicuous location:

> Each candidate may designate the political party or political group that the candidate is registered as affiliated with. A candidate's political party or political group designation on a ballot does not imply that the candidate is nominated or endorsed by the party or political group or that the party or group approves of or associates with that candidate.
>
> In each race, you may vote for any candidate listed. If a primary election was held for a state office, United States senator, or United States representative, the four candidates who received the most votes for the office in the primary election advanced to the general election. However, if one of the four candidates who received the most votes for an office at the primary election died, withdrew, resigned, was disqualified, or was certified as incapacitated 64 days or more before the general election, the candidate who received the fifth most votes for the office advanced to the general election.
>
> At the general election, each candidate will be selected through a ranked-choice voting process and the candidate with the greatest number of votes will be

elected. For a general election, you must rank the candidates in the numerical order of your preference, ranking as many candidates as you wish. Your second, third, and subsequent ranked choices will be counted only if the candidate you ranked first does not receive enough votes to continue on to the next round of counting, so ranking a second, third, or subsequent choice will not hurt your first-choice candidate. Your ballot will be counted regardless of whether you choose to rank one, two, or more candidates for each office, but it will not be counted if you assign the same ranking to more than one candidate for the same office.

***Sec. 65.** AS 15.58.020(b) is amended to read:

(b) Each primary, special, or special **primary** [RUNOFF] election pamphlet shall contain only the information specified in (a)(6) and (a)(9) of this section for each ballot measure scheduled to appear on the primary, special, or special **primary** [RUNOFF] election ballot.

***Sec. 66.** AS 15.58.020 is amended by adding a new subsection to read:

(c) Notwithstanding (a) of this section, if a pamphlet is prepared and published under AS 15.58.010 for a

(1) primary election, the pamphlet must contain the following statement written in bold in a conspicuous location, instead of the statement provided by (a)(13) of this section:

In each race, you may vote for any candidate listed. The four candidates who receive the most votes for a state office, United States senator, or United States representative will advance to the general election. However, if, after the primary election and 64 days or more before the general election, one of the four candidates who received the most votes for an office at the primary election dies, withdraws, resigns, is disqualified, or is certified as incapacitated, the candidate who received the fifth most votes for the office will advance to the general election.

Each candidate may designate the political party or political group that the candidate is registered as affiliated with. A candidate's political party or political group designation on a ballot does not imply that the candidate is nominated or endorsed by the party or group or that the party or group approves of or associates with that candidate;

(2) a special primary election, the pamphlet must contain the following statement written in bold in a conspicuous location, instead of the statement provided by (a)(13) of this section:

In each race, you may vote for any candidate listed. The four candidates who receive the most votes for a state office or United States senator will advance to the special election. However, if, after the special primary election and 64 days or more before the special election, one of the four candidates who received the most votes for a state office or United States senator at the primary election dies, withdraws, resigns, is disqualified, or is certified as incapacitated, the

candidate who received the fifth most votes for the office will advance to the general election. Each candidate may designate the political party or political group that the candidate is registered as affiliated with. A candidate's political party or political group designation on a ballot does not imply that the candidate is nominated or endorsed by the party or group or that the party or group approves of or associates with that candidate.

***Sec. 67.** AS 15.58.030(b) is amended to read:

(b) Not [NO] later than July 22 of a year in which a state general election will be held, an individual who becomes a candidate for the office of United States senator, United States representative, governor, lieutenant governor, state senator, or state representative under AS 15.25.030 [OR 15.25.180] may file with the lieutenant governor a photograph and a statement advocating the candidacy. [AN INDIVIDUAL WHO BECOMES A CANDIDATE FOR THE OFFICE OF UNITED STATES SENATOR, UNITED STATES REPRESENTATIVE, GOVERNOR, LIEUTENANT GOVERNOR, STATE SENATOR, OR STATE REPRESENTATIVE BY PARTY PETITION FILED UNDER AS 15.25.110 MAY FILE WITH THE LIEUTENANT GOVERNOR A PHOTOGRAPH AND A STATEMENT ADVOCATING THE CANDIDACY WITHIN 10 DAYS OF BECOMING A CANDIDATE.]

***Sec. 68.** AS 15.80.010(9) is amended to read:

(9) "federal election" means a general, special, special **primary** [RUNOFF], or primary election held solely or in part for the purpose of selecting, nominating, or electing a candidate for the office of President, Vice-President, presidential elector, United States senator, or United States representative;

***Sec. 69.** AS 15.80.010(27) is amended to read:

(27) "political party" means an organized group of voters that represents a political program and

(A) that [NOMINATED A CANDIDATE FOR GOVERNOR WHO RECEIVED AT LEAST THREE PERCENT OF THE TOTAL VOTES CAST FOR GOVERNOR AT THE PRECEDING GENERAL ELECTION OR] has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election;

(B) if the office of governor was not on the ballot at the preceding general election but the office of United States senator was on that ballot, that [NOMINATED A CANDIDATE FOR UNITED STATES SENATOR WHO RECEIVED AT LEAST THREE PERCENT OF THE TOTAL VOTES CAST FOR UNITED STATES SENATOR AT THAT GENERAL ELECTION OR] has registered voters in the state equal in number to at least three percent of the total votes cast for United States senator at that general election; or

(C) if neither the office of governor nor the office of United States senator was on the ballot at the preceding general election, that [NOMINATED A CANDIDATE FOR UNITED STATES REPRESENTATIVE WHO RECEIVED AT LEAST THREE PERCENT OF THE TOTAL VOTES CAST FOR UNITED STATES REPRESENTATIVE AT THAT GENERAL ELECTION OR] has registered voters in the state equal in number to at least three percent of the total votes cast for United States representative at that general election;

***Sec. 70.** AS 15.80.010 is amended by adding a new paragraph to read:

(46) "ranked-choice voting" means, in a general election, the method of casting and tabulating votes in which voters rank candidates in order of preference and in which tabulation proceeds in sequential rounds in which (a) a candidate with a majority in the first round wins outright, or (b) last-place candidates are defeated until there are two candidates remaining, at which point the candidate with the greatest number of votes is declared the winner of the election.

***Sec. 71.** AS 39.50.020(b) is amended to read:

(b) A public official or former public official other than an elected or appointed municipal officer shall file the statement with the Alaska Public Offices Commission. Candidates for the office of governor and lieutenant governor and, if the candidate is not subject to AS 24.60, the legislature shall file the statement under AS 15.25.030 [OR 15.25.180]. Municipal officers, former municipal officers, and candidates for elective municipal office, shall file with the municipal clerk or other municipal official designated to receive their filing for office. All statements required to be filed under this chapter are public records.

***Sec. 72.** AS 15.25.014, 15.25.056, 15.25.110, 15.25.120, 15.25.130, 15.25.140, 15.25.150, 15.25.160, 15.25.170, 15.25.180, 15.25.185, 15.25.190, 15.25.200; AS 15.40.141, 15.40.142, 15.40.150, 15.40.200, 15.40.210, 15.40.290, 15.40.300, 15.40.450, and 15.40.460 are repealed.

***Sec. 73.** The provisions of this act are independent and severable. If any provision of this act, or the applicability of any provision to any person or circumstance, shall be held to be invalid by a court of competent jurisdiction, the remainder of this act shall not be affected and shall be given effect to the fullest extent possible.

***Sec. 74.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION; VOTER EDUCATION AS TO CHANGES MADE TO STATE ELECTION SYSTEMS THROUGH ADOPTION OF A RANKED-CHOICE VOTING SYSTEM.

For a period of not less than two calendar years immediately following the effective date of this Act, the director of elections shall, in a manner reasonably calculated to educate the public, inform voters of the changes made to the state's election systems in this Act.

THE STATE of ALASKA
GOVERNOR MICHAEL J. DUNLEAVY

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August 29, 2019

Via Email and U.S. Mail

The Honorable Kevin Meyer
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: *19AKBE Ballot Measure Application Review*
AGO No. 2019200578

Dear Lieutenant Governor Meyer:

You asked us to review an application for an initiative bill entitled:

> An Act prohibiting the use of dark money by independent expenditure groups working to influence candidate elections in Alaska and requiring additional disclosures by these groups; establishing a nonpartisan and open top four primary election system for election to state executive and state and national legislative offices; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; establishing a ranked-choice general election system; supporting an amendment to the United States Constitution to allow citizens to regulate money in Alaska elections; repealing the special runoff election for the office of United States Senator and United States Representative; requiring certain written notices to appear in election pamphlets and polling places; and amending the definition of 'political party'. (19AKBE).

Our role in reviewing initiatives is to ensure they meet all constitutional and statutory requirements. We do not opine on the merits of the policy choices presented or any administrative or implementation issues that could arise if the initiative bill was

enacted. Because 19AKBE addresses more than one subject in violation of the Alaska Constitution, we recommend that you decline to certify the application.

I. The proposed initiative bill.

This bill proposed by this initiative would both overhaul Alaska's elections process and alter its campaign finance laws by requiring additional campaign finance disclosures and disclaimers. The most significant change would be to abolish the state's mandatory primary election or petition process and establish an open nonpartisan primary system in which all candidates—regardless of party affiliation or non-affiliation—would run in a single primary election. All candidates would appear on one ballot, and each candidate could choose to have his or her political party or group affiliation listed by the candidate's name or choose to be listed as undeclared or nonpartisan. The top-four candidates with the most votes in the primary election would then have their names placed on the general election ballot. The ballots, polling places, and election pamphlets would include notices explaining that the identification of a candidate's political party or group affiliation on the ballot is not an endorsement of the candidate by that political party or group.

The act would also establish a ranked-choice general election. Under this new ranked-choice framework, each voter would be allowed to "rank" the four listed candidates. A "1" ranking would reflect the voter's first choice candidate, a "2" the voter's second choice candidate, and so on. The Division of Elections would then tally the votes for each candidate by counting every ballot's first-ranked candidate. If there were more than two candidates and no candidate received a majority of the first-ranked votes, then the candidate with the least amount of votes would be considered defeated and removed from counting. Any ballot that had selected the removed candidate as the first-ranked candidate would then be counted for voter's second-ranked candidate. This process would repeat until there were only two candidates remaining or one candidate received a majority of the votes.

Lastly, the act would modify state campaign law by requiring new and additional disclosures. It would require additional disclosures for contributions of more than $2,000 to independent expenditure groups. It would also require disclaimers on any paid communications by an independent expenditure group, when a majority of contributors to the group reside outside Alaska.

In total, 19AKBE contains 74 sections, and provides as follows:

Section 1 would add a new section to the uncodified law. It would list findings and intent supporting the substantive law changes made in the initiative bill and state that

Alaska supports a constitutional amendment allowing citizens to regulate the raising and spending of money in elections.

Section 2 would change the requirements for two of the three election board members appointed by the election supervisor. Under current law, the election supervisor shall appoint one nominee from the political party of which the governor is a member and one nominee of the political party that received the second largest number of votes statewide. Section 2 would change the requirement to include political party "or political group with the largest number of registered voters at the time of the preceding gubernatorial election" and political party "or political group with the second largest number of registered voters at the time of the preceding gubernatorial election."

Section 3 would allow each candidate, regardless of party affiliation or party nomination, to appoint one or more poll watchers. Section 3 would also make a conforming change because of the repeal of the special runoff election under AS 15.40.141 proposed in Section 72 of the initiative bill.

Section 4 would change the qualifications of certain appointees to the Alaska Public Offices Commission by allowing the governor to appoint a member of "political groups with the largest number of registered voters" as of the most recent preceding general election at which a governor was elected.

Section 5 would make a conforming change necessitated by the change in Section 4.

Section 6 would add disclosure requirements relating to the "true source" of contributions to a nongroup entity in excess of $2,000 annually.

Section 7 would add a new subsection requiring certain disclosures from every individual, person, nongroup entity, or group that contributes more than $2,000 annually to an independent expenditure group.

Section 8 would change the contribution limits for governor and lieutenant governor to a joint campaign limit of $1,000 annually for an individual and $2,000 annually for a group. This reflects the proposed changes to the primary election whereby the governor and lieutenant governor would run jointly on a single ticket.

Section 9 would add disclosure requirements for contributions to independent expenditure groups, including a requirement that contributions to independent expenditure groups may not annually total $2,000 or more of "dark money," as defined in Section 17.

Section 10 would make conforming changes necessitated by the repeal of the special runoff election under AS 15.40.141 as proposed in Section 72 of the initiative bill and the change to an open primary system.

Section 11 would require that certain existing disclaimers on paid political advertisements be shown throughout the entirety of the communication if in a broadcast, cable, satellite, internet or other digital format.

Section 12 would add a new subsection to require an additional disclaimer on paid political advertisements funded by an outside-funded entity, as defined in Section 19.

Section 13 would make conforming changes necessitated by the repeal of the nominating petition process under AS 15.25.140-15.25.200 as proposed in Section 72 of the initiative bill.

Section 14 would require disclosure by contributors whose contributions to independent expenditure groups, or a group the contributor knows or has reason to know will make independent expenditures, exceed $2,000 annually.

Section 15 would create new fines for failure to disclose certain contributions to independent expenditure groups as required by Section 7 and failure to disclose the "true source" of a contribution as required by Sections 7 and 9.

Section 16 would make conforming changes necessitated by the change to an open primary.

Sections 17-19 would define the new terms in the campaign finance sections, including "dark money," "true source," and "outside-funded entity."

Section 20 would establish an open primary system.

Section 21 would allow each candidate to have his or her party affiliation designated after the candidate's name on the ballot, or choose the designation of nonpartisan or undeclared.

Sections 22-23 would require additional notices on the ballot and at each polling place letting voters know that a candidate's designated party affiliation on the ballot does not signify the political party or political group's approval or endorsement of that candidate.

Section 24 would establish ranked-choice voting for the general election, whereby each voter may rank all of the candidates. This section would provide how the ranked-

choice votes should be counted, starting with the number "1" ranking on all ballots. If there are more than two candidates and none of the candidates gets a majority of the total votes, the candidate with the least amount of votes would be removed from the count, and ballots that ranked that candidate as "1" would then be counted for the second ranked candidate on those ballots. This would continue until a candidate obtains a majority or there are only two candidates remaining, at which point the candidate with the highest number of votes wins.

Section 25-27 would make conforming changes to account for ranked-choice voting on the general election ballot and the open primary system.

Section 28 would make conforming changes necessitated by the change to an open primary system.

Section 29 would make conforming changes necessitated by the repeal of the special runoff election under AS 15.40.141 as proposed in Section 72 of the initiative bill and the change to an open primary system.

Section 30 would change the requirements for two of the four district absentee ballot counting board members and two of the four district questioned ballot counting board members. Under current law, the election supervisor shall appoint one nominee from the political party of which the governor is a member and one nominee of the political party that received the second largest number of votes statewide. Section 30 would change the requirement to include political party "or political group with the largest number of registered voters at the time of the preceding gubernatorial election" and political party "or political group with the second largest number of registered voters at the time of the preceding gubernatorial election."

Sections 31-36 would make conforming changes necessitated by the repeal of the special runoff election under AS 15.40.141 as proposed in Section 72 of the initiative bill and the change to an open primary system.

Section 37 would adopt an open primary system. The primary would no longer serve to determine the nominee of a political party or political group. Instead, the primary would narrow the number of candidates whose name would appear on the general election ballot to four.

Section 38 would amend the candidate declaration to require that candidates for governor and lieutenant governor include the name of the candidate's running partner, since the governor and lieutenant governor would run jointly in the primary. This section would also make other conforming changes.

Section 39 would repeal and reenact the statute establishing the process for preparation and distribution of ballots to account for the open primary system where there would only be one primary ballot.

Section 40 would repeal and reenact the statute that establishes which candidates will be placed on the general election ballot to account for the open primary system. This would include a process for filling a vacancy that occurs after the primary election.

Section 41 would allow a write-in candidate at the general election to designate his or her political party or political group affiliation, or be designated as undeclared or nonpartisan.

Section 42 would eliminate the requirement for write-in candidates that a candidate for governor run jointly with a candidate for lieutenant governor from the same political party or group.

Section 43 would provide that the ranked-choice method of voting in the general election applies to the election of electors of President and Vice President.

Sections 44-49 would amend the special election process for filling a vacancy in the office of United States senator or United States representative to provide for a special primary, conducted as an open primary, followed by a special election. These sections would also make conforming changes necessitated by the repeal of the special runoff election under AS 15.40.141 and the party petition process under AS 15.40.200-15.40.210 as proposed in Section 72 of the initiative bill.

Section 50-54 would amend the special election process for filling a vacancy in the office of the governor to provide for a special primary, conducted as an open primary, followed by a special election.

Section 55 would amend the statute providing for the qualifications and the confirmation process for an appointee to a vacant legislative office to include "political group" along with "political party." Under the existing statute, being a member of a specific "political party" becomes one of the qualifications for appointment. This section would include "political group" as a qualification, if the predecessor in office was a member of a "political group" but not a "political party."

Sections 56-60 would amend the special election process for filling a vacancy in the state senate to provide for a special primary, conducted as an open primary, followed by a special election.

Sections 61-63 would make conforming changes necessitated by the repeal of the special runoff election under AS 15.40.141 as proposed in Section 72 of the initiative bill and the change to an open primary system.

Sections 64-66 would require the election pamphlets for the general election and the primary election to include a notice to voters that the any political party or political group affiliation listed next to a candidate does not represent the political party or group's endorsement or nomination. The election pamphlets would also include an explanation of the open primary system. Lastly, the general election pamphlet would explain the ranked-choice voting method.

Section 67 would make conforming changes necessitated by the repeal of the party petition process under AS 15.25.110 and the no-party nomination petition process under AS 15.25.180 as provided in Section 72 of the initiative bill.

Section 68 would make conforming changes necessitated by the repeal of the special runoff election under AS 15.40.141 as proposed in Section 72 of the initiative bill and the change to an open primary system.

Section 69 would amend the definition of "political party" by deleting language referring to the "nomination" of a candidate by the group seeking to be recognized as a political party. Instead, political party status would only be determined by the number of registered voters the group has, not the number of votes a prior nominated candidate received.

Section 70 would add a definition of "ranked-choice voting."

Section 71 would make conforming changes necessitated by the repeal of the no-party candidate petition process under AS 15.25.180 as provided in Section 72 of the initiative bill.

Section 72 would repeal statutes relating to party petitions, no-party candidates, and special-runoff elections.

Section 73 is a severability clause.

Section 74 would add a new section of uncodified law to require the director of elections for two years to make efforts to inform voters of the changes made to the state's elections process under this initiative bill.

II. Analysis.

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative bill within 60 calendar days of receipt and "certify it or notify the initiative committee of the grounds for denial." The application for the 19AKBE initiative was filed with the Division of Elections on July 3, 2019. The sixtieth calendar day after the filing of the initiative is Sunday, September 1, 2019.

Under AS 15.45.080, certification shall be denied only if: "(1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors."

A. Form of the proposed initiative bill.

In evaluating an application for an initiative bill, you must determine whether the application is in the "proper form."[1] Specifically, you must decide whether the application complies with "the legal procedures for placing an initiative on the ballot, and whether the initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot."[2]

The form of an initiative bill is prescribed by AS 15.45.040, which requires four things: (1) that the bill be confined to one subject; (2) that the subject be expressed in the title; (3) that the bill contain an enacting clause stating: "Be it enacted by the People of the State of Alaska"; and (4) that the bill not include prohibited subjects. The list of prohibited subjects is found in article XI, section 7 of the Alaska Constitution and AS 15.45.010. An initiative includes a prohibited subject when it makes or repeals appropriations; enacts local or special legislation; dedicates revenue; or creates courts, defines their jurisdiction, or prescribes their rules.[3] You may deny certification only if the measure violates one or more of these restrictions, or if "controlling authority establishes its unconstitutionality."[4]

In reviewing this initiative bill, we identified two potential concerns that we carefully reviewed. First, we considered whether the bill violates the single-subject rule because it makes significant changes to distinct democratic processes; it establishes an

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1 Alaska Const. art. XI, § 2.

2 *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988).

3 AS 15.45.010; *see also* Alaska Const. art. XI, § 7 (prohibiting dedicating revenue, creating courts, defining court jurisdiction or prescribing court rules).

4 *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 n. 22 (Alaska 2003).

open primary, moves to a ranked-choice general election, and changes campaign finance disclosure laws. Second, we evaluated whether the change to an open primary system and the new campaign finance disclosure requirements were clearly unconstitutional under existing authority. As explained further below, we conclude that the bill violates the single-subject rule because it contains more than one subject. We further conclude that although the bill is constitutionally suspect, there is no controlling authority directly on point such that the proposed provisions could be deemed clearly unconstitutional.

Thus, the initiative bill meets only three of the four requirements of AS 15.45.040. The subjects of the bill are expressed in the title, the bill has the required enacting clause, and the bill does not include any of the prohibited subjects and is not clearly unconstitutional under existing authority. But the bill fails to meet the requirement that the bill be confined to one subject.

i. The initiative bill violates the single-subject rule.

Article II, section 13 of the Alaska Constitution requires that "[e]very bill shall be confined to one subject." The single-subject rule requires that all parts of a bill "fall under some one general idea" and "be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."[5] The court will only strike down a bill for violating this rule if the violation is "substantial and plain."[6]

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[5] *Croft v. Parnell*, 236 P.3d 369, 372-373 (Alaska 2010); *Gellert v. State*, 522 P.2d 1120, 1123 (Alaska 1974) (quoting *Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891).

[6] *Croft*, 236 P.3d at 373.

Despite the "considerable breadth" the Alaska Supreme Court has afforded the single-subject rule,[7] the Court has also made clear that the will of the voter has profound importance in any single-subject analysis.[8] In the context of initiative bills, the single-subject rule is intended to protect "the voters' ability to effectively exercise their right to vote by requiring that different proposals be voted on separately."[9] Confining initiative bills to one subject assures both that voters can "express their will through their votes more precisely," and "prevents the adoption of policies through stealth or fraud, and prevents the passage of measures lacking popular support by means of log-rolling."[10] Log-rolling, the Court has explained, "consists of deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure."[11]

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7 *Id. See also See Suber v. Alaska State Bond Committee*, 414 P.2d 546, 557 & n. 23 (Alaska 1966) (criminal penalty for false statements in application for earthquake relief funds "fairly incidental to the general subject ... of grants to homeowners"); *Gellert*, 522 P.2d at 1123 (Alaska 1974) (flood control projects and small boat harbors "all part of a cooperative water resources development program"); *North Slope Borough v. SOHIO*, 585 P.2d 534, 545–46 (Alaska 1978) (various provisions on municipal and state taxes all "relate directly to state taxation"); *Short v. State*, 600 P.2d 20, 22–24 & n. 2 (Alaska 1979) (purposes of new correctional facilities "sufficiently related to the purposes" of new buildings for "state troopers, fish and wildlife protection, a motor vehicles division, [and] a fire prevention division"); *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406, 414–15 (Alaska 1982) (provisions regulating sale of private land, and provisions on state's power to lease state-owned land and zone private lands all "in some respect concern[ ] land"); *Yute Air v. McAlpine*, 698 P.2d 1173, 1175, 1181 (Alaska 1985) (repeal of regulations of "motor and air carriers in Alaska," prohibition on further similar regulation, and requirement that governor seek repeal of federal statute that, among other things, regulates shipping by sea, all embraced by "[t]he subject 'transportation' "); *Evans v. State*, 56 P.3d 1046, 1049, 1070 (Alaska 2002) (changes to damages recoverable for torts, changes to tort statutes of limitations, change to allocation of fault between parties in tort suits, change to offer of judgment rules, and grant of partial immunity to hospitals all "within the single subject of 'civil actions' ").

8 *Croft*, 236 P.3d. at 372.

9 *Id.*

10 *Id.*

11 *Gellert*, 522 P.2d at 1122; see also Proceedings of the Alaska Constitutional Convention at 1746-47 (discussion of the single-subject requirement and the concern over log-rolling).

The Alaska Supreme Court's approach to the single-subject test reflects its increasing misgivings with the breadth of the rule under past cases. In *State v. First National Bank of Anchorage*, for example, the Court concluded that bill sections related to the Uniform Land Sales Practices Act and the Alaska Land Act both fell under the single subject of "land."[12] The Court's discussion, however, illuminated its dissatisfaction with the test's expansiveness, which effectively hamstringed its ruling. The Court acknowledged:

> Were we writing on a clean slate, we would be inclined to find this subject impermissibly broad. Permitting such breadth under the one-subject rule could conceivably be misconstrued as a sanction for legislation embracing the whole body of law. Nevertheless, while the issue is indeed close, we are unable to say that the legislature has transgressed the limits of article II, section 13 established by prior decisions of this court.[13]

A few years later, the Court reiterated its dissatisfaction with the single-subject test and the unique risks it posed in the initiative context. In *Yute Air Alaska, Inc. v. McAlpine*,[14] a per curiam court determined that an initiative titled "Reducing Government Regulation of Transportation," satisfied the single-subject test even though the bill sought to repeal statutes regulating motor and air carriers in Alaska, open the carrier business further, prohibit municipal regulation of such activities, and require the governor to repeal the federal statute requiring the use of United States vessels for shipping goods between U.S. ports.[15] But the Court once again expressed the reservations it first raised in *First National.*[16] And in writing his dissent, Justice Moore noted that the court had "mistakenly continued to give the rule such an extremely liberal interpretation that the rule has become a farce," leading it to become "almost meaningless,"[17] whereby even the most disparate subjects could be "enfolded within the cloak of a broad generality."[18]

Justice Moore aptly recognized that application of the single-subject rule is to some degree context specific. [19] For example, when a bill becomes a law through an

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12 660 P.2d 406, 414-15 (Alaska 1982).

13 *Id.* at 415.

14 698 P.2d 1173 (Alaska 1985).

15 *Id.* at 1174.

16 *Id.*

17 *Id.* at 1182 (Moore, J., dissenting).

18 *Id.* at 1183.

19 Id. at 1184.

initiative, "the problems the single-subject rule was designed to prevent are exacerbated," and "[t]here is a greater danger of logrolling, the deliberate intermingling of issues to increase the likelihood of an initiative's passage, and there is a greater opportunity for "inadvertence, stealth and fraud" in the enactment-by-initiative process."[20]

Years later, the Alaska Supreme Court decided *Croft v. Parnell*, and recognized that the concerns Justice Moore articulated with the single-subject test are particularly salient in the initiative context. In *Croft*, the Court held that an initiative bill that sought to publicly fund state elections by increasing the oil production tax violated the single-subject rule.[21] In reviewing the bill, the Court recognized that the single-subject rule protects voters' ability to effectively exercise their right to vote and assures that measures passed secure popular support.[22] It then held that the initiative "directly implicate[d] one of the main purposes of the single-subject rule—the prevention of log-rolling—in two ways."[23] First, "coupling the approval of a new oil production tax with approval of a program to publicly fund elections deprives the voters of an opportunity to send a clear message on each subject encompassed by the Sponsor's initiative."[24] And second, "offering the chance of increased Permanent Fund Dividend payments runs the risk of garnering support for the clean elections program from voters who are otherwise indifferent—or even unsupportive—of public funded campaigns."[25]

Croft thus recognizes the acute dangers of log-rolling in the initiative context, and the Alaska Supreme Court's interest in preventing the harms the single subject rule was designed to combat. When confronted with an initiative, voters have only one opportunity to provide an up or down vote, regardless of their feelings on any of the distinct proposed provisions.[26] Unlike legislators, they cannot deliberate, propose amendments, and compromise on the relative merits of dissimilar provisions. In this context, it is therefore critical for voters to have a clear choice. They must be allowed to vote on different bills covering different subjects separately. The single-subject rule protects them from having to struggle with how to express their political will through a vote on an overly complex initiative bill covering disjointed subjects.

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20 *Id.*

21 *Croft*, 236 P.3d at 374.

22 *Id.* at 372-33.

23 *Id.*

24 *Id.*

25 *Id.*

26 *Id.* at 373 (recognizing that proposing new government program and creation and "soft dedication" of a new revenue source "does not provide the voters with an opportunity to express their approval or disapproval of each distinct proposal.").

Like the initiative bill at issue in *Croft*, 19AKBE runs afoul of these principles and directly implicates the main purposes of the single subject rule in the initiative context. It "deprives voters of an opportunity to send a clear message" by covering at least two, if not three, discrete and important subjects. As presented, 19AKBE would force voters to accept or reject as a whole: (1) the elimination of the party primary system and the establishment of an entirely new nonpartisan primary; (2) a new ranked-choice voting process that amends how candidates in the general election are elected and how votes are counted; and (3) additional campaign finance disclosure and disclaimer requirements. These subjects are, each in their own right, of significant import to Alaskans. And they directly implicate at least three constitutional rights—the right to advocate for the election or defeat of candidates through monetary contributions;[27] the associational right of political parties and political groups to select a standard-bearer;[28] and the right to vote.[29]

The *Croft* court's focus on the will of the voter also takes on profound importance when one considers the diversity, complexity, and sheer scope of 19AKBE. The subjects at issue in 19AKBE involve core decisions regarding democracy, the right to free speech, and the right to association under the First Amendment. There is nothing more foundational to our democracy than voting and electing our leaders. How that process should work, how a person's vote is counted, and what role political parties play in that process are questions that impact every Alaskan. To combine those issues in a single initiative with yet another controversial question concerning what burdens should be placed on a person's or entity's right to support or oppose specific candidates is a bridge too far under the single-subject rule.

The subjects presented in this initiative also engender understandable passion, controversy and strong opinions. One could easily imagine a voter passionately wanting an open primary, yet zealously opposing more robust campaign finance requirements due to First Amendment concerns. Forcing both of these subjects into a single bill deprives that voter of the opportunity to express their will on either. Making voters take such an all or nothing approach thus compromises voters' ability "to effectively exercise their right to vote,"[30] on critical questions that go to the very core of government. It could also result in "the passage of measures lacking popular support by means of log-rolling," where

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27 *See Citizen's United v. Federal Election Commission*, 558 U.S. 310 (2010).

28 *See Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008); *State v. Alaska Democratic Party*, 426 P.3d 901.

29 *See Sonneman v. State*, 969 P.2d 632, 637 (Alaska 1998) ("voting is unquestionably a fundamental right").

30 *Id* at 372.

some groups might well support the significant changes to the primary and general elections but oppose increased campaign finance reform—or vice versa.[31]

Despite the breadth afforded the single-subject rule, 19AKBE embodies many of the concerns identified in *Croft*, and for that reason it violates the single-subject rule. Whether the changes proposed in 19AKBE are good or bad policy will ultimately be up to the people or the legislature. But because an initiative must be in the proper form in order to be certified and 19AKBE violates the single-subject rule, we recommend denial of certification.

ii. 19AKBE is not clearly unconstitutional under existing authority

We also considered whether any of the provisions in 19AKBE were clearly unconstitutional such that the petition must be rejected. The Alaska Supreme Court generally "refrain[s] from giving pre-enactment opinions on the constitutionality of statutes, whether proposed by the legislature or by the people through their initiative power, since an opinion on a law not yet enacted is necessarily advisory."[32] But the Court has also articulated two grounds on which a petition may be rejected before circulation: (1) "if it violates the subject matter restrictions" discussed above; or (2) if it "proposes a substantive ordinance whereby controlling authority establishes its unconstitutionality."[33] The second ground is considered as "an exception to the rule that judicial review of an initiative's constitutionality may not be obtained until after the voters have enacted the initiative."[34] The Court provided an example of a "clearly unconstitutional" initiative bill as one that would require segregation in schools in violation of *Brown v. Board of Education of Topeka, Kansas*, 349 U.S. 294 (1955).[35] In 2006, the Alaska Supreme Court applied this framework when it affirmed the Lieutenant Governor's decision not to certify an initiative bill that called for Alaska's secession from the United States, upon concluding that "secession is clearly unconstitutional."[36]

We evaluated 19AKBE in this light, and conclude that despite the questionable nature of many of the significant proposed changes in this initiative, it does not rise to the level of being "clearly unconstitutional." 19AKBE includes provisions that would (1) eliminate the political party primary, which plainly implicate the freedom of association

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31 *Ibid.*

32 *Kohlhaas v. State*, 147 P.3d 714, 717 (2006).

33 *Id.*

34 *Id.* at 717-18.

35 *Id.* at 718 and n.17.

36 *Id.* at 717-18.

rights of political parties and political groups; and (2) require additional campaign finance disclosures relating to independent expenditure groups, which implicate free speech rights.

As to the first issue, 19AKBE would significantly alter the manner in which candidates advance to the general election by creating an open, non-partisan primary, thereby implicating the associational rights of political parties. The U.S. Supreme Court has acknowledged a party's interest in the process by which a party selects its standard bearer. In *California Democratic Party v. Jones*, the Court invalidated California's blanket primary, whereby all parties' primary races to nominate party candidates were included on the same ballot, and every voter could vote for any candidate.[37] The Court held that the scheme violated the parties' First Amendment rights by infringing on a party's ability to exclude voters from voting to nominate the parties' candidate for the general election.

The Alaska Supreme Court has also recognized a political party's associational rights to choose its nominees in a recent case involving the Democratic Party's challenge to a state statute that prohibited a political party from allowing nonmembers to run in the party primary.[38] In *State v. Alaska Democratic Party*, the Court repeatedly acknowledged that the party had a "right to choose its general election nominees." It ultimately invalidated the state's party-membership provision, concluding that the statute severely burdened the party's right and was not narrowly tailored to achieve the state's interests.[39]

Nevertheless, the U.S. Supreme Court has also upheld a state open primary system similar to that proposed by 19AKBE, concluding that the law on its face did not "impose a severe burden on political parties' associational rights."[40] Therefore, while the U.S. Supreme Court upheld an open primary system from a facial constitutional attack—though leaving open the question of how any later as-applied challenge might be resolved—the Alaska Supreme Court has not yet had an opportunity to directly review this issue.

The Alaska Constitution does protect political party associational rights more robustly than the federal constitution.[41] Accordingly, it is possible that the Alaska

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37 *California Democratic Party v. Jones*, 530 U.S. 567, 575 (2008).

38 *State v. Alaska Democratic Party*, 426 P.3d 901 (Alaska 2018).

39 *Id.* at 909-915.

40 *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 444 (2008).

41 *Alaska Democratic Party*, 426 P.3d at 909.

Supreme Court could decline to follow the reasoning of *Washington State Grange*[42] and could conclude that 19AKBE violates a political party's speech and/or associational rights as protected by the Alaska Constitution. The Court could reach this conclusion because 19AKBE would permit a candidate to declare party affiliation on the primary and general election ballot and would permit voters unaffiliated with a party to vote on whether to pass the party's candidate on to the general ballot, while denying the party itself the ability to identify its standard bearer on the general election ballot. Regardless of how valid these arguments might appear, however, it cannot be said at this time that they demonstrate a "clear unconstitutionality" of 19AKBE.

19AKBE would create an open primary similar to the one that was facially upheld by the U.S. Supreme Court. Essentially under 19AKBE, the state would not be involved in political party nominations of candidates. Instead, a political party would be free to endorse whichever candidate it chooses in the open primary and general election, and it would be up to the political parties as to how that nomination or endorsement occurred. This type of open primary raises unique constitutional concerns that implicate a party's rights of association. But under the highly deferential pre-enactment standard of review, there is no clear legal authority directly on point such that the open primary system contemplated under 19AKBE can be deemed "clearly unconstitutional."

The second issue involves campaign finance disclosure laws relating to independent expenditure groups. The most concerning provisions relate to "dark money" restrictions and additional disclosures for "outside-funded entities." Campaign finance laws, which regulate political speech, by their very nature implicate the First Amendment and are subject to constitutional challenge. Courts may be called upon to determine whether the government's interest in disclosure laws, which are intended to ensure transparent and fair elections, is outweighed by the burdens the initiative bill would place on the core First Amendment right to engage in political speech. However, the question here is simply are these provisions clearly unconstitutional. Despite the potential challenges that could be raised against the initiative once enacted, there is no existing authority under which the campaign finance disclosure requirements in 19AKBE can be deemed unconstitutional under the Alaska Supreme Court's legal framework for pre-enactment review.

In fact, the U.S. Supreme Court upheld campaign finance disclosure requirements in *Citizens United v. Federal Election Commission*,[43] and described the existing precedent authorizing disclosure requirements as follows:

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42 *Washington State Grange*, 552 U.S. at 444.

43 558 U.S. 310 (2010).

> Disclaimer and disclosure requirements may burden the ability to speak, but they impose no ceiling on campaign-related activities or prevent anyone from speaking. The *Buckley* Court explained that disclosure can be justified by a governmental interest in providing the electorate with information about election-related spending sources . . . . However, the Court acknowledged that as-applied challenges would be available if a group could show a reasonable probability that disclosing its contributors' names would subject them to threats, harassment, or reprisals from either Government officials or private parties.[44]

For the reasons described above, none of the provisions in 19AKBE are clearly unconstitutional under existing authority.

B. Form of the application.

The form of an initiative application is prescribed by AS 15.45.030, which provides that the application must include the

(1) proposed bill;

(2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and

(3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

The application on its face meets the first requirement, as well as the latter portion of the second requirement regarding the statement on each signature page. With respect to the first clause of the second requirement, we understand the Division of Elections has reviewed the sponsor signatures and determined that the application contains the signatures and addresses of—159 qualified voters. The application also includes a designation of an initiative committee, who subscribed to the application, thus satisfying the third requirement. Therefore, the application is in the proper form.

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44 *Id.* at 885 (internal quotations and citations omitted).

III. Conclusion.

The single-subject rule serves an important constitutional purpose in the initiative context by protecting voters' ability to have their voices heard. But 19AKBE, if certified, would force voters into an all or nothing approach on multiple important policy choices, all of which implicate their fundamental constitutional rights in different ways. Because we conclude that the initiative bill violates the single-subject rule, we recommend that you decline to certify the initiative application.

If you decide to reject the initiative, we suggest that you give notice to all interested parties and groups who may be aggrieved by your decision.[45] This notice will trigger the 30-day appeal period during which these persons must contest your action.[46]

Please contact us if we can be of further assistance to you on this matter.

Sincerely,

Kevin G. Clarkson
Attorney General

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45 AS 15.45.240.

46 AS 15.25.240; *McAlpine*, 762 P.2d at 86.

Lieutenant Governor Kevin Meyer
STATE OF ALASKA

August 30, 2019

Jason Grenn
4611 Caravelle Drive
Anchorage, Alaska 99502

Mr. Grenn:

On July 3, 2019, I received your application for the following initiative that you entitled:

> ***"An Act prohibiting the use of dark money by independent expenditure groups working to influence candidate elections in Alaska and requiring additional disclosures by these groups; establishing a nonpartisan and open top four primary election system for election to state executive and state and national legislative offices; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; establishing a ranked-choice general election system; supporting an amendment to the United States Constitution to allow citizens to regulate money in Alaska elections; repealing the special runoff election for the office of United States Senator and United States Representative; requiring certain written notices to appear in election pamphlets and polling places; and amending the definition of 'political party'."***

I forwarded the application to the Division of Elections for verification of signatures and to the Department of Law for legal review.

The Division of Elections determined that 159 of the 162 signatures submitted were those of qualified voters. Therefore, the application has a sufficient number of sponsors to qualify for circulation of a petition under AS 15.45.030. The petition statistics report prepared by the Division of Elections is enclosed.

The Department of Law reviewed the application for compliance with AS 15.45.040 and recommends that I decline to certify this initiative on the grounds that the bill violates the single-subject rule. Based on this recommendation, and in accordance with AS 15.45.080, I am denying certification of your initiative application. A copy of the Department of Law opinion dated August 29, 2019 regarding the application is enclosed.

Please be advised that under AS 15.45.240, "any person aggrieved by a determination made by the lieutenant governor under AS 15.45.010 - AS 15.45.220 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of the determination was given."

If you have further questions, please contact April Simpson in my office at (907) 465-4081.

Sincerely,

Kevin Meyer

Kevin Meyer
Lieutenant Governor

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Anchorage 907-522-8683
Fairbanks 907-451-2835
Juneau 907-465-3021
Nome 907-443-5285
Mat-Su 907-373-8952

STATE OF ALASKA
Division of Elections
Office of the Lieutenant Governor

Date: July 23, 2019

To: The Honorable Kevin Meyer
Lieutenant Governor

From: Gail Fenumiai, Director
Division of Elections

Subject: **19AKBE – Alaska's Better Elections Initiative**

The Division of Elections reviewed the sponsor signatures submitted in the application for the above referenced initiative petition.

We have determined that 159 of the 162 signatures submitted to be those of qualified voters. The application has a sufficient number of sponsor signatures to qualify for circulation of a petition under AS 15.45.030(2).

A copy of the computer printout listing the status of each sponsor for this petition application is attached.

Attachment: 19AKBE – Application Petition Signers Report

cc: Carol A. Thompson, Absentee and Petition Manager
Cori M Mills, Assistant Attorney General, Department of Law

October 6, 2017

The Honorable Byron Mallott
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: *17AKGA Ballot Measure Application Review*
AGO No. JU2017200579

Dear Lieutenant Governor Mallott:

You asked us to review an application for an initiative entitled "An Act relating to government accountability to the People of the State of Alaska; and providing for an effective date" (17AKGA). Because the application complies with the specific constitutional and statutory provisions governing the initiative process, we recommend that you certify the application.

I. The proposed initiative bill.

The bill proposed by this initiative would amend several provisions of Title 24 of the Alaska Statutes relating to legislative conflicts of interest and payments to legislators. The bill would also add a provision to Title 15 related to campaign finance. The bill is eleven sections long, and generally provides as follows:

Section 1 would add to the uncodified law a statement of findings and intent. The statement provides that the people of the State of Alaska find that government must be accountable to the people. According to this statement, the government fails to be accountable when it endangers Alaska's economy and state functions by failing to pass a timely annual budget, uses taxpayer dollars to pay for foreign travel that does not benefit Alaskans, allows foreign corporate interests to spend "unlimited amounts of money to influence" Alaska's elections, fails to address many of legislators' financial conflicts of interest, and permits lobbyists to "give unlimited food and drink to legislators."

Sections 2, 3, and 4 would amend existing provisions of AS 24.60.030 (entitled "Prohibited conduct and conflicts of interest"). The amendments would prohibit a legislator from directly or indirectly taking or withholding official action or exerting official influence that could substantially benefit or harm the financial interests of certain people. Those people include any member of the legislator's immediate family, any employer of the legislator or of a member of the legislator's immediate family, anyone with whom the legislator is negotiating for employment, and anyone from whom the legislator or a member of the legislator's immediate family received more than $10,000 of income in the preceding twelve months. The amendments would further require that a

legislator declare conflicts of interest before voting in committee, and ask to be excused from voting in a house of the legislature, if the legislator or a member of the legislator's immediate family has a substantial financial interest that the action to be voted on would affect to a greater extent than it affects the general public. A legislator would still be able to participate in public debate and vote on budget bills under these restrictions. Finally, the amendments would add new definitions of "financial interest" and "substantially benefit or harm."

Sections 5 and 6 would amend existing provisions of AS 24.45.121 ("Prohibitions") governing the conduct of lobbyists, and AS 24.60.080 ("Gifts"), governing gifts to legislators and legislative employees. The amendments would specify that allowable gifts of food and beverages from a lobbyist to a legislator or legislative employee for immediate consumption are limited to de minimis food and nonalcoholic beverages.

Section 7 would amend existing AS 24.10.130 ("Moving expenses and per diem allowance"). The amendments would provide that no legislator is entitled to a per diem allowance after the 121st day of a regular legislative session until the first day after the legislature passes an appropriations bill fully funding state operating expenditures or the first day of the next regular legislative session, whichever is earlier.

Section 8 would amend existing provisions of AS 24.10.120 ("Method of payment") to prohibit payment for travel by legislators to final destinations outside the United States unless the legislator files a public report with the Legislative Affairs Agency "clearly evidencing how such travel benefits the state and serves a legislative purpose."

Section 9 would add a new section to AS 15.13 ("State Election Campaigns") restricting the financing of state election campaigns by foreign-influenced corporations. Specifically, such corporations could not make, promise to make, or agree to make a covered expenditure with respect to a candidate in an election, a contribution to a group, or a contribution to a person that makes covered expenditures or contributions unless that person segregates contributions from foreign nationals and foreign-influenced corporations. This section would define "corporation," "covered expenditure," "electioneering expenditure," "media communication," "membership communication," "shareholder communication," "election," "foreign national," "foreign-influenced corporation," and "foreign owner." The section would also require the Alaska Public Offices Commission to promulgate implementing regulations, including, by July 1, 2019, regulations to provide guidance to corporations for determining the percentage of their foreign ownership.

Section 10 contains a severability clause.

Section 11 provides for an effective date of July 1, 2019.

II. Analysis.

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative bill within sixty calendar days of receipt and either "certify it or notify the initiative committee of the grounds for denial." The application for the 17AKGA initiative was filed on August 30, 2017. The sixtieth calendar day after the filing date is October 30, 2017.[1] Under AS 15.45.080, certification shall be denied if: "(1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors."

A. Form of the proposed initiative bill.

In evaluating an application for an initiative bill, you must determine whether the application is in "proper form."[2] Specifically, you must decide whether the application complies with "the legal procedures for placing an initiative on the ballot, and whether the initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot."[3]

The form of an initiative bill is prescribed by AS 15.45.040, which requires four things: (1) that the bill be confined to one subject; (2) that the subject be expressed in the title; (3) that the bill contain an enacting clause stating: "Be it enacted by the People of the State of Alaska"; and (4) that the bill not include prohibited subjects. An initiative includes a prohibited subject when it makes or repeals appropriations; enacts local or special legislation; dedicates revenue; or creates courts, defines their jurisdiction, or prescribes their rules.[4] You may deny certification only if the measure violates one or more of these restrictions, or if "controlling authority establishes its unconstitutionality,"

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1 Although Sunday, October 29 is actually the sixtieth calendar day, AS 01.10.080 suggests that the next business day, October 30, is the legal deadline.

2 Alaska Const. art. XI, § 2.

3 *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988).

4 AS 15.45.010; Alaska Const. art. XI, § 7.

for example, if it mandates racially segregated schools in violation of *Brown v. Board of Education.*[5]

This initiative bill meets all four requirements of AS 15.45.040. The bill is confined to one subject, the subject is expressed in the title, the bill has the required enacting clause, and the bill does not include a prohibited subject. The bill is also not clearly unconstitutional under controlling authority.

In reviewing this initiative bill, we carefully considered whether it violates the single-subject rule, particularly because of the inclusion of section 9, related to campaign finance. We took guidance from the Alaska Supreme Court's statements that it avoids applying the single-subject rule too narrowly, requiring only that all parts of a proposal "fall under some one general idea" and "be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."[6]

In *Croft v. Parnell* the court held—for the first time—that an initiative violated the single-subject rule.[7] The bill in *Croft* would have created a voluntary program to provide public campaign funding to candidates for state office and would have created a new oil production tax, with a "soft dedication" of the revenue from the new tax to fund the program.[8]

Although the court broadly construes the single-subject rule, it concluded that the bill in *Croft* violated a main purpose of the rule—preventing logrolling.[9] It described logrolling as "appealing to different constituencies by including distinct provisions calculated to obtain sufficient votes to pass a measure."[10] The court observed that some voters could be driven to support the bill in *Croft* entirely by animosity toward the oil and gas industry, while others could be equally motivated by strong feelings of support for

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5 *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 900 n. 22 (Alaska 2003) (citing *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955)).

6 *Croft v. Parnell*, 236 P.3d 369, 372–73 (Alaska 2010); *Gellert v. State*, 522 P.2d 1120, 1123 (Alaska 1974) (quoting *Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891)).

7 *Croft*, 236 P.3d at 374.

8 *Id.* at 370–71.

9 *Id.* at 374.

10 *Id.*

the jobs and tax revenue generated by that industry.[11] "Either way," the court held, "coupling the approval of a new oil production tax with approval of a program to publicly fund elections deprives the voters of an opportunity to send a clear message on each subject encompassed by the Sponsors' initiative."[12]

We do not believe 17AKGA implicates the court's core concern in *Croft*. Given the considerable breadth with which the court construes the single-subject rule, we believe the court would uphold 17AKGA against a single-subject challenge. All parts of 17AKGA are aimed at one general idea: holding elected officials accountable to the public, from the funding of their campaigns to their conduct in office. 17AKGA enables voters to send a clear message on that single subject.

B. Form of the application.

The form of an initiative application is prescribed by AS 15.45.030, which provides that the application must include the

(1) proposed bill;

(2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and

(3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

The application on its face meets the first and third requirements, as well as the latter portion of the second requirement regarding the statement on the signature page. With respect to the first clause of the second requirement, we understand that the Division of Elections has determined that the application contains the names, signatures, addresses, and numerical identifiers of 176 qualified voters.

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11 *Id.*

12 *Id.*

III. Proposed ballot and petition summary.

We have prepared a ballot-ready petition title and summary to assist you in complying with AS 15.45.090(2) and AS 15.45.180, as is our practice. Alaska Statute 15.45.180(a) requires that the ballot proposition "give a true and impartial summary of the proposed law." The same statute limits the number of words in the title of an initiative to twenty-five and the number of words in the body of the summary to fifty times the number of sections in the proposed law. "Section" in AS 15.45.180(a) is defined as "a provision of the proposed law that is distinct from other provisions in purpose or subject matter."

This bill has eleven sections. Therefore, the number of words in the summary may not exceed 550. There are 14 words in the title and 201 words in the following summary, which we submit for your consideration:

An Act Relating to Government Accountability to the People of the State of Alaska

> This act would restrict a legislator from taking or withholding official action that would help or harm the financial interests of certain people. These people include a legislator's family, employer, potential employer, and anyone from whom the legislator or his or her immediate family earned more than $10,000 in the prior year. The act would require a legislator to declare conflicts of interest before voting in a legislative committee. And it would require a legislator to ask to be excused from voting in the legislature if the legislator has a financial conflict. The act would prevent lobbyists from offering or giving legislators gifts of alcoholic drinks or significant food. The act would ban legislators from receiving per diem after the first 121 days of a regular legislative session, until they pass a budget bill or the next regular session begins. The act would prohibit the state from paying for foreign travel by legislators, unless it clearly benefits the state and serves a legislative purpose. The bill would also restrict money that foreign-influenced corporations could spend to influence a state or local candidate election. The Alaska Public Offices Commission would adopt regulations to enforce this part of the act.
>
> Should this initiative become law?

Under AS 15.80.005(b), "[t]he policy of the state is to prepare a neutral summary that is scored at approximately 60," using the Flesch test formula described in AS 15.80.005(c). This summary has a Flesch test score of 38.12. While this is below the

target readability score of 60, meeting that target is a goal, not a requirement.[13] The Alaska Supreme Court has upheld ballot summaries scoring as low as 33.8.[14] Given the nature of this initiative bill and the difficulty of describing its provisions simply without compromising accuracy and neutrality, we believe the summary satisfies the readability standards of AS 15.80.005.

IV. Conclusion.

The proposed bill and application are in the proper form and the application complies with the constitutional and statutory provisions governing the use of the initiative. We therefore recommend that you certify the initiative application and notify the initiative committee of your decision. You may then begin to prepare petitions in accordance with AS 15.45.090.

Please contact us if we can be of further assistance to you on this matter.

Sincerely,

JAHNA LINDEMUTH
ATTORNEY GENERAL

By:
Elizabeth M. Bakalar
Assistant Attorney General

EMB/akb

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[13] *See* AS 15.80.005(d) (providing that a court may not enjoin election or election results for failure to comply with readability requirements).

[14] 2007 Op. Att'y Gen. (Oct. 17), 2007 WL 3118191, at *10 (noting Flesch test score of 33.8); *Pebble Ltd. P'ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1082–84 (Alaska 2009) (approving adequacy of summary).

September 6, 2017

The Honorable Byron Mallott
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: *17FSH2 Ballot Measure Application Review*
AGO No. JU2017200457

Dear Lieutenant Governor Mallott:

You asked us to review an application for an initiative entitled: "An Act providing for protection of wild salmon and fish and wildlife habitat" (17FSH2). Because the application does not comply with the specific constitutional and statutory provisions governing the initiative process, we recommend that you decline to certify the application.

I. The proposed initiative bill.

The bill proposed by this initiative would amend, repeal, and reenact various provisions of AS 16.05 to protect water quality in anadromous fish habitat from the adverse effects of development and human activity. The bill is fourteen sections long, and provides as follows:

Section 1 would add a statement of fish habitat policy to the uncodified law. The statement provides that because wild salmon are critically important to Alaska's communities, it is state policy to: ensure sustainable fisheries and fish and wildlife habitat; protect water resources and anadromous fish habitat; ensure that development in these habitats meets enforceable standards; and ensure the State meets its constitutional obligation to protect Alaska's fisheries.

Section 2 would create new fish and wildlife habitat-protection standards under AS 16.05 and require the Commissioner of the Department of Fish and Game (Commissioner) to ensure the proper protection of fish and wildlife, including protecting anadromous fish habitat from significant adverse effects. To that end, this section would require the Commissioner to maintain certain standards when issuing permits for development in anadromous fish habitat with respect to: water quality and temperature; stream flow; species passage; habitat-dependent connections; habitat bank and bed stability; aquatic diversity; and adjacent riparian areas. This section would also allow the Commissioner to adopt regulations to implement these standards.

Section 3 would repeal and reenact existing AS 16.05.871. This section would require a person to get an anadromous fish habitat permit "before initiating any activity that may use, divert, obstruct, pollute, disturb or otherwise alter anadromous fish habitat." The section would further allow the Commissioner to specify in regulation activities that do not require an anadromous fish habitat permit, provided the activity has only a *de minimis* effect on such habitat. This section contains a presumption and definition of what constitutes "anadromous fish habitat," but allows the Commissioner to specify it further in regulation, and make site-specific exemptions to the presumption.

Section 4 would create a new application process for anadromous-fish-habitat permits under AS 16.05. The Commissioner would create the application form and collect from applicants all information necessary to assess a proposed activity's effects on anadromous fish habitat, and, in consultation with the applicant, determine whether the proposed activity has the potential to cause significant adverse effects on anadromous fish habitat, and issue a permit accordingly with public notice of his decision.

Section 5 adds a new section to AS 16.05 requiring the Commissioner to "find the potential for significant adverse effects" where the activity may, alone or along with other factors: impair or degrade protected habitat characteristics; interfere with spawning, rearing, or migration of anadromous fish; increase mortality of anadromous fish; reduce aquatic diversity, productivity, or stability; or impair other criteria set in regulation. Under this section, the Commissioner must find that the proposed activity will cause substantial damage to anadromous fish and wildlife species if the habitat "will be adversely affected such that it will not likely recover or be restored within a reasonable period to a level that sustains the water body's, or portion of the water body's" fish and wildlife species. In making that determination, the Commissioner must account for various factors that impact the adversely affected species and habitat.

Section 6 adds new sections to AS 16.05 that describe timeframes, public notice and bonding requirements, and detailed criteria that the Commissioner must consider when issuing, amending, or rescinding: (1) minor individual anadromous fish habitat permits; (2) general permits for minor activities; and (3) major anadromous fish habitat permits.

Section 7 adds a new section to AS 16.05 that would require the Commissioner to "prevent or minimize significant adverse effects to anadromous fish habitat" by requiring certain permit conditions and mitigation measures. Under this section, the Commissioner may not permit an activity that would: cause substantial damage to anadromous fish habitat; fail to ensure the proper protection of fish and wildlife; store or dispose of mining waste or tailings in a way that could result in the discharge of certain acids, metals, pollutants, or other compounds "that will adversely affect, directly or indirectly, anadromous fish habitat, fish, or wildlife species that depend on anadromous fish

habitat"; replace or supplement a wild fish population with a hatchery-dependent fish population; "withdraw water from anadromous fish habitat in an amount that will adversely affect anadromous fish habitat, fish, or wildlife species"; or "dewater and relocate a stream or river if the relocation does not provide for fish passage or will adversely affect anadromous fish habitat, fish, or wildlife species." The Commissioner would require permittees to take steps to mitigate such adverse effects. The Commissioner could adopt regulations to implement this section.

Section 8 would create a new process in AS 16.05 for reconsidering and appealing permit determinations. The section sets forth the timeframes and procedures through which "any interested person" could file a written request asking the Commissioner to reconsider a permit determination, and a process through which such persons could appeal the Commissioner's final determination to superior court under the judicial review provisions of the Administrative Procedure Act.

Section 9 would add a new process to AS 16.05 through which the Commissioner would notify a person in violation of statute, regulation, or permit and seek to have the permittee rectify any violation.

Sections 10 and 11 would amend existing provisions of AS 16.05.901 making certain statutory violations of AS 16.05 a Class A misdemeanor. The section would penalize as Class A misdemeanors criminally negligent violations of AS 16.05.687-901, a regulation adopted under that statutory scheme, or a permit condition, order, or mitigation measure issued pursuant to those statutes and regulations. These sections would also allow the Commissioner to impose civil penalties on persons or entities that cause material damage to anadromous fish and wildlife habitat.

Section 12 would define the scope of the Act. It would make the Act inapplicable "to existing activities, operations, or facilities that have received all required federal, state, and local permits, authorizations, licenses, and approvals for activities adversely affecting anadromous fish habitat, on or before the effective date" of the Act, until the permit, license, authorization or approval expires.

Section 13 would repeal AS 16.05.851 and AS 16.05.896.

Section 14 would add a severability clause to the uncodified law.

II. Analysis.

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative bill within sixty calendar days of receipt and either "certify it or notify the initiative committee of the grounds for denial." The application for the 17FSH2 initiative was filed on July 14, 2017. The sixtieth calendar day after the filing date is September 12, 2017. Under AS 15.45.080, certification shall only be denied if: "(1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors."

A. Form of the proposed initiative bill.

In evaluating an application for an initiative bill, you must determine whether the application is in the "proper form."[1] Specifically, you must decide whether the application complies with "the legal procedures for placing an initiative on the ballot, and whether the initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot."[2]

The form of an initiative bill is prescribed by AS 15.45.040, which requires four things: (1) that the bill be confined to one subject; (2) that the subject be expressed in the title; (3) that the bill contain an enacting clause stating: "Be it enacted by the People of the State of Alaska"; and (4) that the bill not include prohibited subjects. An initiative includes a prohibited subject when it makes or repeals appropriations; enacts local or special legislation; dedicates revenue; or creates courts, defines their jurisdiction, or prescribes their rules.[3]

This initiative bill meets the first three requirements of AS 15.45.040. It is confined to one subject—protection of wild salmon and fish and wildlife habitat. The subject is expressed in the title and the bill has the required enacting clause.

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1 Alaska Const. art. XI, § 2.

2 *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988).

3 AS 15.45.010; *see also* Alaska Const. art. XI, § 7 (prohibiting dedicating revenue, creating courts, defining court jurisdiction or prescribing court rules).

With respect to the final requirement, in determining whether an initiative bill contains a prohibited subject, the Alaska Supreme Court has adopted a "deferential attitude toward initiatives"[4] and has consistently recognized that the constitutional and statutory provisions pertaining to the use of the initiative should be liberally construed in favor of allowing an initiative to reach the ballot.[5] Indeed, the court has "sought to preserve the people's right to be heard through the initiative process wherever possible."[6] With respect to concerns "grounded in general contentions that the provisions of an initiative are unconstitutional," you may deny certification only if "controlling authority leaves no room for argument about its unconstitutionality."[7]

But even though liberal access to the initiative process is required, the constitutional restrictions on that process are nevertheless important conditions that require strict compliance.[8] For the following reasons, we conclude that the bill violates the appropriations restriction by depriving the legislature of its exclusive discretion to allocate state assets among competing needs.

In our letter of June 30, 2017 to the sponsors, we expressed our concerns with a prior version of this initiative bill designated by the Division of Elections as 17FSHB. In response to this letter, the sponsors withdrew the 17FSHB initiative bill and filed this one, which the Division subsequently designated as 17FSH2.

While 17FSH2 has several changes to the bill's language, we believe that 17FSH2 still violates Article XI, section 7 of the Alaska Constitution for the same reasons we cited previously.

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4 *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985).

5 *McAlpine*, 762 P.2d at 91; *Yute Air*, 698 P.2d at 1181.

6 *Hughes v. Treadwell*, 341 P.3d 1121, 1125 (Alaska 2015); *Pebble Ltd. P'ship ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1076 (Alaska 2009).

7 *Id.* (internal citations and quotations omitted).

8 *Citizens for Tort Reform v. McAlpine*, 810 P.2d 162, 168 n.14 (Alaska 1991).

As we noted earlier, the Alaska Constitution prohibits initiatives that make an appropriation of state assets, which include state resources such as anadromous waters.[9] This prohibition against appropriating public assets by initiative is meant to "re[tain] control . . . of the appropriation process *in the legislative body*."[10] An initiative is unobjectionable as long as it grants the legislature sufficient discretion in executing the initiative's purpose.[11] But an initiative that controls the use of public assets such that it essentially usurps the legislature's resource allocation role runs afoul of article XI, section 7.[12]

17FSH2 clearly limits the legislature's ability to decide how to allocate anadromous streams among competing uses. The initiative contains restrictions and directives that would require the Commissioner to reject permits for resource development or public projects in favor of fish habitat. Although 17FSH2 alters the language of 17FHSB slightly, the overarching concerns regarding legislative infringement that we noted in our letter of June 30, 2017 remain.

Specifically, despite the altered language, we remain concerned that 17FSH2 would, theoretically and/or in practice, categorically prohibit certain mines, dams, roadways, gaslines, and/or pipelines. In doing so, the measure would effectively set state waters aside for the specific purpose of protecting anadromous fish and wildlife habitat "in such a manner that is executable, mandatory, and reasonably definite with no further legislative action,"[13] while leaving insufficient discretion to the legislature or its delegated executives to use that resource in another way.

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9 Alaska Constitution, Art. XI, § 7; *Pebble Ltd. Partnership ex rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1074 (Alaska 2009).

10 *Staudenmaier v. Municipality of Anchorage*, 139 P.3d 1259, 1263 (citing *City of Fairbanks v. Fairbanks Convention & Visitors Bureau*, 818 P.2d 1153, 1156 (Alaska 1991)). (Emphasis in original).

11 *Staudenmaier*, 139 P.3d at 1263 (citing *McAlpine*, 762 P.2d 81 at 91).

12 *Staudenmaier*, 139 P.3d at 1263 (citing *Alaska Action Ctr. v. Municipality of Anchorage*, 84 P.3d 989, 994-95 (Alaska 2004)).

13 *City of Fairbanks*, 818 P.2d at 1157.

Among other things, the initiative's provisions on disposal and storing of mining waste, stream dewatering and relocation, and adverse effects to anadromous fish habitat would effectively preclude some uses altogether. It should not matter if the initiative deprives the legislature of such choices categorically or only in isolated cases, because, either way, the initiative would unconstitutionally restrict the legislature's ability to allocate state resources.[14]

In short, like 17FSHB, 17FSH2 would prohibit the use of anadromous waters for certain development purposes, leaving insufficient discretion to the legislature to determine how to allocate those state assets. We express no opinion whether 17FSH2 is good or bad policy. We simply find it to be inconsistent with what the people, by initiative, may do under the Alaska Constitution.

B. Form of the application.

The form of an initiative application is prescribed by AS 15.45.030, which provides that the application must include the

(1) proposed bill;

(2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and

(3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

The application on its face meets the first and third requirements, as well as the latter portion of the second requirement regarding the statement on the signature page. With respect to the first clause of the second requirement, we understand that the Division of Elections has determined that the application contains the signatures and addresses of 158 qualified voters.

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[14] 17FSH2 does not appear to leave sufficient discretion to the legislature to save it—as did the *Pebble Ltd. Partnership* initiative (07WTR3) that allowed the legislature to determine the amounts of specific toxic pollutants that may or may not be discharged at a mining site. *See Pebble Ltd. Partnership*, 215 P.3d at 1077.

C. Number of qualified sponsors.

As noted above, AS 15.45.030(2) requires an initiative application to contain the signatures and addresses of not fewer than 100 qualified voters who sponsor the initiative. We understand that the Division of Elections has determined that 17FSH2 meets that requirement.

III. Conclusion.

The line between permissible regulation and unconstitutional appropriation by initiative—particularly in the area of natural resource management—is not always clear. That line is periodically refined by emerging caselaw from the Alaska Supreme Court. Our duty is to advise you to act in a manner that upholds the Alaska Constitution and adheres to existing Alaska Supreme Court precedent interpreting its provisions.[15] We do not believe that 17FSH2 meets constitutional mandates under existing precedent. For that reason, we find that the proposed bill is not in the proper form, and therefore recommend that you decline to certify 17FSH2.

If you decide to reject the initiative, we suggest that you give notice to all interested parties and groups who may be aggrieved by your decision.[16] This notice will trigger the 30-day appeal period during which these persons must contest your action.[17]

Please let us know if we can be of further assistance to you on this matter.

Sincerely,

JAHNA LINDEMUTH
ATTORNEY GENERAL

By:

Elizabeth M. Bakalar
Assistant Attorney General

EMB/akb
Enclosure

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15 *See* AS 44.23.020.

16 AS 15.45.240

17 AS 15.25.240; *McAlpine,* 762 P.2d at 86.

2014 WL 6847741 (Alaska A.G.)

Office of the Attorney General

State of Alaska
A.G. File No. JU2014200708
November 26, 2014

Re: Review of Initiative Application for "An Act creating criminal penalties for public officials who regulate or legislate competitive advantages for, or direct appropriations to their business partners, their clients, their contributors, and other defined close associates and creating criminal penalties for those who succeed in profiting by inducing public officials to violate this act."

*1 The Honorable Mead Treadwell
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Dear Lieutenant Governor Treadwell:
You asked us to review an application for an initiative entitled: "An Act creating criminal penalties for public officials who regulate or legislate competitive advantages for, or direct appropriations to their business partners, their clients, their contributors, and other defined close associates and creating criminal penalties for those who succeed in profiting by inducing public officials to violate this act" (hereafter, "14CPO2"). Because the application complies with the specific constitutional and statutory provisions governing the initiative process, we recommend that you certify the application.

I. The proposed initiative bill.

The bill proposed by this initiative would repeal and reenact AS 11.56.130 in Title 11 of the Alaska Statutes (Criminal Law) [1]
The proposed new AS 11.56.130 would be titled "Presumptive political bribery" and consist of four sub-sections as follows:
• **11.56.130 (a)** would make it "a class A felony for public officials to regulate or legislate competitive advantages for, or direct appropriations to themselves, their business partners, their clients, immediate family, past present, or sought-after employers or contributors, including contributors to independent expenditure campaigns intended to increase the probability of their election."

• **11.56.130 (b)** would make it "a class A felony to receive an appropriation, or secure a competitive advantage over competition for profit through regulation or statute by inducing public officials to violate (a) of this section."

• **11.56.130 (c)** provides that "[p]resumptive political bribery shall be narrowly construed. Actions affecting legislation and/or regulations which similarly impact a broad spectrum of population, and have relatively minor fiscal impacts incidental only to implementation, are exempt. Members of deliberative bodies may absolve themselves of potential conflict by entering their conflict into the record and refraining from voting."

• **11.56.130 (d)** provides that "[f]or purposes of applying AS 12.10 governing limitations of actions, in a prosecution under AS 11.56.130, the statute of limitations begins to run with the violation and continues to run for ten years."

II. Analysis.

Under AS 15.45.070, the lieutenant governor must review an application for a proposed initiative bill and within sixty calendar days of receipt either "certify it or notify the initiative committee of the grounds for denial." The application for the 14CPPO initiative was filed on November 12, 2014. The sixtieth calendar day after the filing date is January 11, 2015[2] Under AS 15.45.080, certification shall only be denied if: "(1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors."

A. Form of the proposed initiative bill.

***2** In evaluating an application for an initiative bill, you must determine whether the application is in the "proper form."[3] Specifically, you must decide whether the application complies with "the legal procedures for placing an initiative on the ballot, and whether the initiative contains statutorily or constitutionally prohibited subjects which should not reach the ballot."[4]

The form of an initiative bill is prescribed by AS 15.45.040, which requires four things: (1) that the bill be confined to one subject; (2) that the subject be expressed in the title; (3) that the bill contain an enacting clause stating: "Be it enacted by the People of the State of Alaska"; and (4) that the bill not include prohibited subjects. The prohibited subjects are making or repealing appropriations; enacting local or special legislation; dedicating revenue; and creating courts, defining their jurisdiction, or prescribing their rules[5]

This initiative bill meets the first three requirements under AS 15.45.040. It is confined to one subject—criminalizing **official corruption**. The subject is expressed in the title ("An act creating criminal penalties for public officials ...") and the bill has the required enacting clause.

With respect to the final requirement—that the initiative bill not contain a prohibited subject—the Alaska Supreme Court has adopted a "deferential attitude toward initiatives"[6] and has consistently recognized that the constitutional and statutory provisions pertaining to the use of the initiative should be liberally construed in favor of allowing an initiative to reach the ballot[7] Indeed, the court has "sought to preserve the people's right to be heard through the initiative process wherever possible."[8] We have reviewed the initiative bill with these principles in mind and conclude that it contains no prohibited subject. As such, the fourth requirement relating to the form of the initiative bill is satisfied.

Unless the initiative bill violates a subject matter restriction under Alaska law on the use of the initiative process or the bill is clearly unlawful under controlling authority, the bill must proceed to the ballot[9] Specifically, you may deny certification only if you determine that the initiative bill violates any of the liberally construed constitutional and statutory provisions regulating initiatives[10] This initiative bill does not appear to violate any of these provisions. With respect to other concerns "grounded in general contentions that the provisions of an initiative are unconstitutional," you may deny certification only if "controlling authority leaves *no room for argument* about its unconstitutionality."[11] We find no such controlling authority and therefore recommend that the initiative be certified.

B. Form of the application.

***3** The form of an initiative application is prescribed in AS 15.45.030, which provides:
The application must include the

(1) proposed bill;

(2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and

(3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

The application on its face meets the first and third requirements, as well as the latter portion of the second requirement regarding the statement on the signature page. With respect to the first clause of the second requirement, we understand that the Division of Elections has determined that the application contains the signatures and addresses of not fewer than 100 qualified voters.

C. Number of qualified sponsors.

As noted above, AS 15.45.030(2) requires that an initiative application contain the signatures and addresses of not fewer than 100 qualified voters. We understand that the Division of Elections has determined that this application meets that requirement.

III. Proposed ballot and petition summary.

We prepared a ballot-ready petition title and summary for your consideration. It is our practice to provide you with a title and summary to assist you in compliance with AS 15.45.090(2) and AS 15.45.180. Under AS 15.45.180, the title of an initiative is limited to twenty-five words and the body of the summary is limited to the number of sections in the proposed law multiplied by fifty. "Section" in AS 15.45.180 is defined as "a provision of the proposed law that is distinct from other provisions in purpose or subject matter." Alaska Statute 15.45.180 requires that the ballot proposition "give a true and impartial summary of the proposed law."

This bill has one section, although the statute it creates has four distinct sub- sections, each of which may be considered provisions of the law that are distinct from one another. Therefore, the maximum number of words in the summary may not exceed 200. There are 8 words in the title and 81 words in the following summary, which we submit for your review:

An Act Creating Criminal Penalties for Public Officials

This act would make it a Class A felony for a public official to regulate or legislate competitive advantages for, or direct appropriations to, themselves, their family, their business partners, and certain others. This act would also make it a Class A felony to profit by inducing public officials to commit such acts. The bill would construe "presumptive political bribery" narrowly. Minor fiscal impacts would not be criminalized. There is a ten year statute of limitations for prosecutions under the bill.
***4** Should this initiative become law?

This summary has a Flesch test score of 38.95. While this is below the target readability score of 60, the Alaska Supreme Court has upheld ballot summaries scoring as low as 33.8, and we therefore believe the summary satisfies the target readability standards of AS 15.80.005 [12]

IV. Conclusion.

The proposed bill and application are in the proper form and the application complies with the constitutional and statutory provisions governing the use of the initiative. We therefore recommend that you certify the initiative application and notify the initiative committee of your decision. You may then begin to prepare petitions in accordance with AS 15.45.090.

Please contact us if we can be of further assistance in this matter.
Sincerely,

Michael C. Geraghty
Attorney General
By: Elizabeth M. Bakalar
Assistant Attorney General

Footnotes

1 Currently, AS 15.56.130 defines "benefit" for purposes of AS 11.56.100-130 ("Bribery and Related Offenses).

2 For reasons not relevant here, you agreed to an expedited review of this application and told the sponsors you would make a certification decision within approximately thirty days, putting your due date for a decision at approximately December 12, 2014.

3 Alaska Const. art. XI, § 2.

4 *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 87 n.7 (Alaska 1988).

5 AS 15.45.010; *see also* Alaska Const. art. XI, § 7 (prohibiting dedicating revenue, creating courts, defining court jurisdiction or prescribing court rules).

6 Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173, 1181 (Alaska 1985).

7 McAlpine, 762 P.2d at 91; Yute Air, 698 P.2d at 1181.

8 Pebble Ltd. P'ship ex rel. Pebble Mines Corp. v. Parnell, 215 P.3d 1064, 1076 (Alaska 2009).

9 See, e.g., *State v. Trust the People*, 113 P.3d 613, 624 (Alaska 2005); *see also Alaska Action Ctr., Inc. v. Municipality of Anchorage*, 84 P.3d 989, 992 (Alaska 2004) ("The executive officer may only reject the measure if controlling authority leaves no room for argument about its unconstitutionality. The initiative's substance must be on the order of a proposal that would mandate local school segregation based on race in violation of *Brown v. Board of Education* before the clerk may reject it on constitutional grounds. And absent controlling authority, the court should not decide this type of challenge until the initiative has been enacted by the voters." (internal citations and quotations omitted)). The lieutenant governor and a municipal clerk have analogous roles in certifying state and municipal initiatives. *Kodiak Island Borough v. Mahoney*, 71 P.3d 896, 898 (Alaska 2003).

10 Alaska Action Ctr., 84 P.3d at 992.

11 Id. (internal citations and quotations omitted) (emphasis added).

12 Under AS 15.80.005(b), "The policy of the state is to prepare a neutral summary that is scored at approximately 60." This office has previously recommended a proposed ballot summary with a Flesch test score as low as 33.8 for a complicated ballot initiative. That summary was upheld verbatim by the Alaska Supreme Court. *See* 2007 Op. Att'y Gen. (Oct. 17; 663-07-0179); *Pebble*, 215 P.3d at 1082-84.

2014 WL 6847741 (Alaska A.G.)

End of Document

May 27, 2009

The Honorable Sean R. Parnell
Lieutenant Governor
P.O. Box 110015
Juneau, Alaska 99811-0015

Re: Review of 09OPUP Initiative Application
A.G. File No: JU2009-200-397

Dear Lieutenant Governor Parnell:

I. INTRODUCTION

You have asked us to review an application for an initiative entitled "An Act to outlaw one's personal use of one's public office to enrichment [sic] one's self."

While there are legal issues with the bill, and it may ultimately be determined by the courts to be unconstitutionally vague, we nevertheless recommend that you certify the application. Vagueness is not a ground on which the Lieutenant Governor may decline to certify an initiative. Rather, it is an issue for the courts to consider post-election. *Alaskans for Efficient Government, Inc. v. State,* 153 P.3d 296, 298 (Alaska 2007).

II. SUMMARY OF THE PROPOSED BILL

The bill provides:

> Anyone found using their public office to enrich themselves, their relatives, close friends, business associates; past, present, or anticipated employers or contributors, is guilty of a class A felony. Anyone found securing enrichment by inducing public officials to violate this statute is guilty of bribery, a class A felony.

The bill further indicates that this provision is intended to amend Title 11 (Criminal Law) of the Alaska Statutes. The bill provides no definition of the word "enrich." A class A felony may be punished by a maximum term of imprisonment of 20 years, and a maximum fine of $250,000. AS 12.55.035(b)(2); AS 12.55.125(c).

III. ANALYSIS

Under AS 15.45.070, the lieutenant governor is required to review an application for a proposed initiative and either "certify it or notify the initiative committee of the grounds for denial" within 60 days of receipt. The grounds for denial of an application are that (1) the proposed bill is not in the required form; (2) the application is not substantially in the required form; or (3) there is an insufficient number of qualified sponsors. AS 15.45.080. We discuss these next.

A. FORM OF THE PROPOSED BILL[1]

The form of a proposed initiative bill is prescribed by AS 15.45.040, which requires that (1) the bill be confined to one subject; (2) the subject be expressed in the title; (3) the enacting clause state, "Be it enacted by the People of the State of Alaska"; and (4) the bill not include prohibited subjects. The prohibited subjects – dedication of revenue, appropriations, the creation of courts or the definition of their jurisdiction, rules of court, and local or special legislation – are listed in AS 15.45.010 and in art. XI, sec. 7, of the Alaska Constitution.

The bill satisfies each of these four requirements. It is confined to one subject, making conduct related to the enrichment of public officials illegal. The subject of the bill is expressed in the title ("An Act to outlaw one's personal use of one's public office to enrichment [sic] one's self").[2]

The enacting clause is set out correctly. We note, however, that the sponsors have added the words "that Title 11 be amended by adding a new section to read:" to the enacting clause. We think this is an immaterial technical defect. *See, e.g., Citizens for Implementing Medical Marijuana v. Municipality of Anchorage,* 129 P.3d 898, 902 (Alaska 2006) (courts will relax technical requirements for citizen initiatives); *Meiners v. Bering Strait Sch. Dist.,* 687 P.2d 287, 296 (Alaska 1984) (courts refrain from imposing

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[1] The Criminal Division of the Department of Law assisted with the preparation of this section.

[2] The title has a minor grammatical error—the word "enrich" instead of "enrichment" should be used. We think this is a minor technical defect. The Court has held that grammatical errors in the title of an initiative, absent other problems with the initiative, will not invalidate an initiative. *Citizens for Implementing Medical Marijuana v. Municipality of Anchorage,* 129 P.3d 898, 902 (Alaska 2006).

"artificial technical hurdles" for recall petitions). We recommend that a line break be implied at the end of the enacting clause so that the bill would read as follows:

Be it enacted by the people of the State of Alaska

That Title 11 be amended by adding a new section to read:

The bill does not contain any of the prohibited subjects. Nevertheless, we do think the bill is potentially unconstitutional on vagueness grounds. In *Levshakoff v. State,* the Alaska Supreme Court held that there are three rationales for holding a statute void for vagueness: (1) "if a statute is so imprecisely drawn that it could potentially be applied to regulate constitutionally protected speech or conduct," (2) "if a statute is so lacking in specificity that it fails to give fair notice of the conduct it prescribes," and (3) "if a statute by its imprecision confers upon judges, jurors, or law enforcement personnel undue discretion in determining what constitutes the crime." 565 P.2d 504, 507 (Alaska 1977). With respect to the third rationale, courts will not invalidate a statute on vagueness grounds "absent evidence of a history of arbitrary or capricious enforcement." *Id.* at 507-08.

We think it likely that this bill violates each of these rationales. By not defining the term "enrich" the statute could be applied to a public official simply holding salaried employment. By not defining "enrich" the statute does not give fair notice of what is illegal. Finally, by not defining "enrich" the statute would arguably give undue discretion to the justice system to determine what is illegal. A history of arbitrary enforcement would need to be presented before a court would invalidate the statute on this basis, however.

Next, the bill prohibits a person from inducing a public official to violate the first part of the statute. The bill describes such conduct as bribery. This suffers from the vagueness concerns discussed in the previous paragraph because it cross references that conduct.

Despite these vagueness issues, pre-election review is confined to whether the ballot measure violates any of the restricted subjects identified in AS 15.45.010 and article XI, section 7 of the Alaska Constitution (dedication of revenue, appropriations, the creation of courts or the definition of their jurisdiction, rules of court, and local or special legislation). Unless "clearly unconstitutional" or "clearly unlawful," consideration of all other issues in the bill must be deferred until after the voters have approved the initiative. *Alaskans for Efficient Government, Inc. v. State,* 153 P.3d 296, 298 (Alaska 2007). By "clearly unconstitutional" the Alaska Supreme Court requires "clear authority

establishing [the bill's] invalidity." *Kodiak Island Borough v. Mahoney,* 71 P.3d 896, 900 (Alaska 2003). As an example, the Court has stated that a bill that requires racial segregation is a clearly unconstitutional bill. *Id.* at 900 n.22. Furthermore, the Alaska Supreme Court held that a blanket primary statute was "clearly unconstitutional" after the U.S. Supreme Court struck down the blanket primary in *California Democratic Party v. Jones,* 530 U.S. 567 (2000). *See O'Callaghan v. State,* 6 P.3d 728, 730 (Alaska 2000). Thus, we conclude that an initiative bill will be plainly unconstitutional or unlawful only when there is controlling authority directly on point that establishes that it is unconstitutional.[3]

In this regard, we have reviewed the case law to determine whether there is any controlling precedent on point holding that a criminal statute that uses the undefined term "enrich" is unconstitutionally vague. We have found no such case. Accordingly, the bill is not clearly unconstitutional, and therefore determination as to whether this bill is unconstitutionally vague must be deferred until after the election.[4]

We think the voters are entitled to be put on notice that the bill does not define the word "enrich." Therefore, in our proposed petition summary we state the word is undefined. We believe this is consistent with the requirement that the petition summary be fair, accurate, complete and impartial. The courts have held that these elements of a petition summary are constitutionally required so that voters may be able to make informed decisions. *See Alaskans for Efficient Gov't v. State,* 52 P.3d 732, 736 (Alaska

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[3] We note that the Court invalidated an initiative on grounds that it was confusing and misleading. *Citizens for Implementing Medical Marijuana v. Municipality of Anchorage,* 129 P.3d 898 (Alaska 2006). In that case, it was impossible to tell from the initiative whether it created or abolished rights with respect to marijuana. *Id.* at 903. We do not think the 09OPUP initiative, however, falls into the category of confusing or misleading. As noted, we have concerns as to whether it is impermissibly vague, but this is an issue for the courts to consider post-election.

[4] The bill has an additional issue. Current Alaska law provides that bribery is a class B felony (maximum term of imprisonment of 10 years and maximum fine of $100,000). The initiative proposes a class A felony for conduct which is a class B felony under current law. AS 11.56.100(c). When there are two statutes of different severity that prohibit arguably the same conduct, the rule of lenity requires that the prosecution proceed under the less severe provision. *See, e.g. Haywood v. State,* 193 P.2d 1203, 1206 (Alaska App. 2008).

2002); *Faipeas v. Municipality of Anchorage,* 860 P.2d 1214, 1219 n.8 (Alaska 1993); *Burgess v. Miller,* 654 P.2d 273, 276 (Alaska 1982).

B. THE FORM OF THE APPLICATION

The form of an initiative application is prescribed in AS 15.45.030, which provides:

> The application must include the
>
> (1) proposed bill;
>
> (2) printed name, the signature, the address, and a numerical identifier of not fewer than 100 qualified voters who will serve as sponsors; each signature page must include a statement that the sponsors are qualified voters who signed the application with the proposed bill attached; and
>
> (3) designation of an initiative committee consisting of three of the sponsors who subscribed to the application and represent all sponsors and subscribers in matters relating to the initiative; the designation must include the name, mailing address, and signature of each committee member.

AS 15.45.030. The application meets the first and third requirements as well as the latter portion of the second requirement regarding the statement on the signature page. With respect to the first clause of the second requirement, the Division of Elections within your office determines whether the application contains the signatures and addresses of not less than 100 qualified voters.

C. NUMBER OF QUALIFIED SPONSORS

The Division of Elections within your office will determine whether there are a sufficient number of qualified sponsors.

IV. PROPOSED BALLOT AND PETITION SUMMARY

We have prepared the following ballot-ready petition summary and title for your consideration:

BILL OUTLAWING ENRICHMENT OF PUBLIC OFFICIALS

> This bill would make it a class A felony for a public official to enrich him or her self, a relative, close friend, business associate, past, present or expected employer or contributor. The bill would also make it a class A felony for a person to convince a public official to break this law. The bill does not define the word "enrich."
>
> Should this initiative become law?

This summary has a Flesch test score of 60.3. We believe that the summary meets the readability standards of AS 15.60.005.

V. CONCLUSION

For the above reasons, we find that the proposed bill is in the proper form, and therefore recommend that you certify this initiative application.

Please contact me if we can be of further assistance to you on this matter.

Sincerely,

RICHARD A. SVOBODNY
ACTING ATTORNEY GENERAL

By:
Michael A. Barnhill
Senior Assistant Attorney General

MAB/cmc

cc: Gail Fenumiai, Director of Division of Elections
Annie Carpeneti, Department of Law

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 21, 2018

SUBJECT: Constitutional issues
(SCS CSSSHB 44(STA)); Work Order No. 30-LS0208\N)

TO: Senator Kevin Meyer
Attn: Christine Marasigan

FROM: Daniel C. Wayne
Legislative Counsel

The draft bill described above is attached. Because it would require a title change in the second house, if the bill passes the Senate will need to adopt a title change resolution. Please let me know if you would like one drafted.

Please read the draft bill carefully. It is similar but not identical to initiative 17AKGA (the initiative), also known as the "Government Accountability Act." Both the bill and the initiative raise constitutional issues.

Effect of bill on Initiative Election

If a court determines the bill is "substantially the same" as the initiative, the bill's enactment would void the initiative and displace it from the ballot, under art. XI, sec. 4, Constitution of the State of Alaska, which reads:

> **Initiative Election.** An initiative petition may be filed at any time. The lieutenant governor shall prepare a ballot title and proposition summarizing the proposed law, and shall place them on the ballot for the first statewide election held more than one hundred twenty days after adjournment of the legislative session following the filing. If, before the election, substantially the same measure has been enacted, the petition is void.

Under AS 15.45.210, the lieutenant governor, with the concurrence of the attorney general, is responsible for determining whether an act of the legislature is substantially the same as a proposed initiative, for purposes of applying art. XI, sec. 4, Constitution of the State of Alaska. AS 15.45.210 reads:

> **Sec. 15.45.210. Determination of void petition.** If the lieutenant governor, with the formal concurrence of the attorney general, determines that an act of the legislature that is substantially the same as the proposed law was enacted after the petition had been filed, and before the date of the

> election, the petition is void and the lieutenant governor shall so notify the committee.[1]

The general test for similarity between a measure enacted by the legislature and an initiative is set out by the Alaska Supreme Court in 1975, in *Warren v. Boucher:*

> It is clear that the legislative act need not conform to the initiative in all respects, and that the framers intended that the legislature should have some discretion in deciding how far the legislative act should differ from the provisions of the initiative. The question, of course, is how great is the permitted variance before the legislative act becomes no longer substantially the same.
>
> Upon reflection we have concluded that the legislature's discretion in this matter is reasonably broad. If in the main the legislative act achieves the same general purpose as the initiative, if the legislative act accomplishes that purpose by means or systems which are fairly comparable, then substantial similarity exists.[2]

In *Warren*, the Court compared the provisions of a legislative act with the provisions of an initiative, and observed that although there were many differences between the two, "it is clear that they both cover the same general subject matter. Both are aimed at the control of election campaign contributions and expenditures."[3] The Court commented on some of the differences between the act and initiative as follows:

> Both measures control the total amount of expenditures by candidates as to primary and general elections. The specific amounts limited in each measure vary. As to the candidates for governor and lieutenant governor the amounts work out nearly the same. As to candidates for the House the initiative limits expenditures to $6,000, while the act limits them to about $7,000. The initiative limits Senate campaign expenditures to $8,000, while the formula used under the act results in a limit of about $14,000.

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[1] AS 15.45.240 reads:

> **Sec. 15.45.240. Judicial review.** Any person aggrieved by a determination made by the lieutenant governor under AS 15.45.010 - 15.45.220 may bring an action in the superior court to have the determination reviewed within 30 days of the date on which notice of the determination was given.

[2] 543 P.2d 731, 736–39 (Alaska 1975).

[3] *Id.* at 737.

> In short, the statute is not a hollow gesture toward the regulation of election campaigns.[4]

Ultimately, the Court determined that the legislative act met the requirements of art. XI, sec. 4, Constitution of the State of Alaska, to void the initiative and displace it from the ballot because

> [v]iewing the two measures as a whole we find that they accomplish the same general goals. They adopt similar, although not identical, functional techniques to accomplish those goals. The variances in detail between the measures are no more than the legislature might have accomplished through reasonable amendment had the initiative become law. Nothing is present here to suggest that the act was a subterfuge to frustrate the ability of the public to obtain consideration and enactment of a comprehensive system to regulate election campaign contributions and expenditures.[5]

In *State v. Trust the People*, the Alaska Supreme Court explained further how the general test adopted in *Warren* applies in a case where the scope of an initiative's subject matter is narrow compared to the scope of the initiative's subject matter in *Warren*:

> *Warren* developed a three-part test to determine whether a proposed initiative and legislation are substantially the same: A court must first determine the scope of the subject matter, and afford the legislature greater or lesser latitude depending on whether the subject matter is broad or narrow; next, it must consider whether the general purpose of the legislation is the same as the general purpose of the initiative; and finally it must consider whether the means by which that purpose is effectuated are the same in both the legislation and the initiative.[6]

Most of the differences between the attached draft bill and the initiative can be attributed to drafting style, but a few are substantive. For example, instead of using "de minimus" to describe food and beverages that a lobbyist can give a legislator or legislative employee, the bill establishes a $15.00 limit on the value of that gift; and, as further explained below, the bill narrows applicability the initiative's prohibition on campaign contributions and expenditures by foreign-influenced corporations. However, the substantive differences between the bill and the initiative are few, and they amount to different ways of addressing identical issues. Therefore, although I cannot predict with certainty the outcome of potential litigation, if a court were to apply the three-part test developed in *Warren* and refined in *State v. Trust the People* to the attached draft bill and the initiative 17AKGA,

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[4] *Id.* at 739 (internal footnote omitted).

[5] *Id.* at 739.

[6] 113 P.3d 613, 621 (Alaska 2005).

the court would probably find that the bill passes that test. If so, the bill would displace the initiative from the election ballot.

The bill raises raise other constitutional issues.

Salary and expenses of legislators
Article II, sec. 7, Constitution of the State of Alaska provides:

> **Salary and Expenses.** Legislators shall receive annual salaries. They may receive a per diem allowance for expenses while in session and are entitled to travel expenses going to and from sessions. Presiding officers may receive additional compensation.

This provision has not yet been interpreted by the Alaska Supreme Court. A plain reading of this section suggests that legislators (1) are constitutionally entitled to a salary; (2) "may receive a per diem allowance," but do not have a constitutional right to receive one; and, (3) are constitutionally entitled to receive "travel expenses going to and from sessions." While the constitution requires that legislators be provided a salary and travel expenses, it appears that per diem is optional; it may or may not be provided by the legislature. Without a constitutional mandate requiring that per diem be provided, a court may find that the legislature may adopt a statute that prohibits payment of per diem after 121 days. However, if the legislature were to later adopt a uniform rule or a legislative policy setting per diem that conflicts with the statute's prohibition on legislative per diem after 121 days of a regular session, the uniform rule or legislative policy may prevail over the statute if challenged.[7] Even when a statute imposes a procedural requirement on the legislature, the court has found the issue to be nonjusticiable. *Abood*, 743 P.2d 333, holding that the Open Meetings Act (AS 44.62.310), then applicable to the legislature, only established a rule of procedure that is not a subject of judicial inquiry unless the procedural violation also infringes on the rights of a third person, ignores constitutional restraints, or violates fundamental rights.

Federal preemption
Sections 1 and 2 of the bill (and section 9 of the initiative) prohibit "foreign-influenced corporations" from making, or promising to make, certain contributions and expenditures in state election campaigns. This may be preempted by federal law. (The draft bill at least partially addresses this issue, as further explained below).

The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating, or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.[8] Because 52 U.S.C. sec. 30121

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[7] *Abood v. League of Women Voters*, 743 P.2d 333 (Alaska 1987); *Malone v. Meekins*, 650 P.2d 351 (Alaska 1982).

[8] *See* 52 U.S.C. sec. 30121, 22 U.S.C. § 611(b), and 11 C.F.R. 110.4.

already clearly prohibits foreign nationals from making campaign contributions, expenditures, and independent expenditures in federal, state, and local elections, a state effort to legislate in this area may face a preemption challenge.

The Supremacy Clause, Art. VI, cl. 2 of the Constitution of the United States, provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Alaska Supreme Court has noted that "[u]nder the Supremacy Clause of the federal constitution, state laws that interfere with federal laws are invalid."[9] The Court has summarized federal preemption law as follows:

> There is a presumption against federal preemption of state law, and preemption doctrine "enjoin[s] seeking out conflicts between state and federal regulation where none clearly exists." Additionally, "[w]here co-ordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes," . . . "the case for federal pre-emption becomes a less persuasive one." But where state law comes into conflict with federal law, the Supremacy Clause of the United States Constitution dictates that state law must always yield.
>
> There are three major types of federal preemption of state law: "express," "field," and "conflict" preemption. Express preemption occurs when Congress explicitly declares an intent to preempt state law in a particular area. . . .
>
> Field preemption is the term used when the federal law governing a particular area is so comprehensive and so complete that Congress is said to have completely occupied a field, leaving no room for state law. We "will not infer an intent to occupy the field where Congress has left some room for state involvement." . . .
>
> Conflict preemption occurs when a state law and a federal law are in conflict, either because compliance with both state and federal law is impossible or because the state law "stands as an obstacle to accomplishment and execution of the full purposes and objectives of

[9] *Allen v. State*, 203 P.3d 1155, 1161, n. 12 (Alaska 2009), quoting *State v. Dupier*, 118 P.3d 1039, 1049 (Alaska 2005).

Congress." . . .[10]

The state clearly does not have authority to regulate contributions and expenditures in campaigns for federal office; that has been expressly preempted by federal law.[11] Whether the state may regulate contributions and expenditures from foreign nationals in campaigns for state office is less clear. I am not aware of any federal statute or regulation which expressly preempts state regulation of foreign contributions and expenditures in campaigns for state office.

However, field preemption may come into play. To the extent a court found that the federal law governing contributions and expenditures by foreign nationals is so comprehensive and complete as to "occupy the field," it could invalidate state law attempting to cover the same ground. To the extent that a state and federal law conflict with each other, conflict preemption is also a possibility.

The draft bill addresses the preemption issue by adding the prohibition on contributions and expenditures by foreign-influenced corporations to AS 15.13.068, a current statute that prohibits foreign nationals from making contributions and expenditures in state election campaigns, and makes the bill's prohibitions on foreign-influenced corporations subject to AS 15.13.068(b) -- a provision that, as amended, by the bill, would require application of the new prohibition to remain within parameters established by federal law.

Freedom of speech and association

The First Amendment protects freedom of speech and freedom of association. Contributions to political campaigns and independent expenditures made on the behalf of a candidate are protected speech under the First Amendment.[12] This speech is a fundamental right. In deciding whether this provision violates a person's rights under the federal constitution's First and Fourteenth Amendments and the state constitution's art. I, secs. 5 and 6, a court will (1) weigh the character and magnitude of the burden that the state's rule imposes on the person's rights against the interests that are contended by the state to justify that burden, and (2) consider the extent to which the state's concerns make the burden necessary.

In this instance, the relevant legal analysis is whether the initiative's campaign contribution

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[10] *Allen v. State*, 203 P.3d 1155, 1160 - 1161 (Alaska 2009) (citations and footnotes omitted).

[11] 52 USC 30143 (specifying that the provisions of the federal election campaigns act "supersede and preempt any provision of state law with respect to election to federal office."); 11 C.F.R. 108.7(b)(3) (federal law "supersedes state law concerning the . . . [l]imitation on contributions and expenditures regarding Federal candidates and political committees.").

[12] *See Randall v. Sorrell*, 126 S. Ct. 2479 (2006); *Buckley v. Valeo*, 424 U.S. 1 (1976).

and expenditure prohibition "burden[s] substantially more speech [or association] then is necessary to further the government's legitimate interests."[13] Without regard to the possible preemption issues prohibiting candidate contributions from a *corporation* controlled by a foreign national, or imposing some restrictions on contributions from *corporations* described as "foreign-influenced corporations" under the initiative, prohibiting a foreign national from contributing to or spending money on a state election campaign is likely constitutional,[14] but the bill's secs. 1 and 2 (and sec. 9 of the initiative) both go further than this, in a way that a court may find is not sufficiently narrowly tailored to the state's interest in protecting its processes of self government, because the prohibition is on *all* expenditures with respect to a candidate in an election and *all* contributions to groups by entities covered by the initiative's expansive definition of "foreign-influenced corporation."

Equal protection

Because the requirements of sections 1 and 2 of the bill (and section 9 of the initiative) apply to a corporation with a certain percentage of its ownership interest held by a foreign national or nationals, or a corporation that permits a foreign national to participate in the process of making decisions, and not to other corporations, these requirements may be vulnerable to an equal protection challenge.

Alaska evaluates equal protection claims using a sliding scale.[15] There are several steps

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[13] *State v. Alaska Civil Liberties Union*, 978 P.2d 597, 619 (Alaska 1999), quoting *California Prolife Council v. Scully*, 989 F. Supp. 1282, 1296 (E. D. Cal. 1998), quoting *Ward v. Rock Against Racism*, 491 U. S. 781, 799 (1989).

[14] The government may exclude foreign citizens from activities "intimately related to the process of democratic self-government." *Bernal v. Fainter*, 467 U.S. 216, 220 (1984); *see also Gregory v. Ashcroft*, 501 U.S. 452, 462 (1991). In the context of elections and campaign finance, the United States District Court for the District of Columbia stated:

> It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government. It follows, therefore, that the United States has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.

Bluman v. F.E.C., 800 F. Supp P.2d 281, 288 (D.D.C. 2011) (holding that the government may bar foreign citizens (at least those who are not lawful permanent residents) from participating in campaign processes to influence how voters would cast their ballots in elections for public office) (*affirmed by Bluman v. F.E.C.*, 565 U.S. 1104 (2012).

[15] *Matanuska-Susitna Borough School v. State*, 931 P.2d 391, 396 (Alaska 1997).

involved. First, the court determines the importance of the interest impaired by the challenged statute. Then the court looks at the purposes served by the statute. Finally, the court looks at how well the statutory means fits the purpose. "The common question in addressing equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to equal treatment."[16] Because campaign contributions and expenditures are a form of political speech subject to protection under the First Amendment, a court will apply "strict scrutiny." Under a strict scrutiny standard, a law must be narrowly tailored to serve a compelling governmental interest.

Like the initiative, the bill's prohibition on certain campaign contributions and expenditures is applicable to a corporation with as little as a five percent foreign ownership interest or, even if there is no foreign ownership interest, to a corporation which employs a foreign national who participates in making decisions relating to campaign contributions and expenditures.[17] Given the multinational and diverse nature of many corporations, it is possible that this prohibition would apply to a large number of corporations (including domestic corporations), doing business in the state. If the prohibition is litigated, a court may find that qualifying a corporation as "foreign-influenced" because a foreign national controls as little as five percent of it, or participates even minimally in the corporation's decision-making relating to contributions and expenditures in some manner, implicates at least some corporations whose campaign contributions and expenditures are not significantly influenced by a foreign national. Although the prohibition against certain contributions and expenditures from foreign-influenced corporations may serve a compelling state interest, a court may find it is an unconstitutional violation of certain corporations' right to equal protection because it is not narrowly tailored to protect that state interest.

If you have questions, please do not hesitate to contact me.

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Attachment

[16] *Anderson v. State*, 78 P.3d 710, 718 (Alaska 2003).

[17] *See* the initiative's sec. 9(b)(9)(C), reflected in the addition of subparagraph 15.13.068(c)(5)(C) in section 1 of this draft bill.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER ELECTIONS, Plaintiff, v. KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and the STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-19-09704 CI

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

The ballot initiative at issue, 19AKBE, would effect two radical changes to Alaska law: replacing the political party primary system with an open nonpartisan primary system and establishing ranked-choice voting in the general election. On top of these dramatic changes, the initiative would also require additional disclosures and disclaimers for independent expenditure groups influencing elections. These three separate and significant legal changes implicate at least three core constitutional rights: voting rights, freedom of association, and freedom of speech.

Whether any of these three changes is good policy is ultimately up to the lawmaking bodies. But voters should have their voices heard on each of these ideas separately—they should not be forced into an all-or-nothing choice on three radical, independent legal changes. This is why a ballot initiative must encompass only one

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subject—to "allow[] voters to express their will through their votes more precisely, prevent[] the adoption of policies through stealth or fraud, and prevent[] the passage of measures lacking popular support by means of log-rolling."[1] Because 19AKBE would present voters with a take-it-or-leave-it proposition encompassing three separate subjects in violation of the single-subject rule, Lieutenant Governor Kevin Meyer and the Division of Elections (together "the State") respectfully ask this Court to grant summary judgment and uphold the Lieutenant Governor's denial of certification.

II. FACTS

In July 2019, Alaskans for Better Elections filed initiative application 19AKBE with the Division of Elections.[2] The initiative bill included the following lengthy title:

> An Act prohibiting the use of dark money by independent expenditure groups working to influence candidate elections in Alaska and requiring additional disclosures by these groups; establishing a nonpartisan and open top four primary election system for election to state executive and state and national legislative offices; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and questioned ballot counting boards, and the Alaska Public Offices Commission; establishing a ranked-choice general election system; supporting an amendment to the United States Constitution to allow citizens to regulate money in Alaska elections; repealing the special runoff election for the office of United States Senator and United States Representative; requiring certain written notices to appear in election pamphlets and polling places; and amending the definition of 'political party'.

The bill proposed by the initiative would make three significant changes to Alaska law: (1) replacing the party primary system with an open nonpartisan primary;

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1 *Croft v. Parnell*, 236 P.3d 369, 372 (Alaska 2010).

2 Ex. A.

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(2) establishing ranked-choice voting in the general election; and (3) adding new disclosure and disclaimer requirements to campaign finance law.

The first proposal in 19AKBE would eliminate the political party primary system, such that political parties would no longer select their candidates to appear on the general election ballot. Instead, there would be an open nonpartisan primary election in which all candidates would appear on one ballot. Candidates could choose to have a political party preference listed next to their name or be listed as "undeclared" or "nonpartisan." The four candidates with the most votes in the primary election—regardless of party—would have their names placed on the general election ballot.[3]

The second proposal in 19AKBE would establish ranked-choice voting for the general election. Instead of choosing just one candidate to vote for, voters could "rank" all of the candidates in order of choice, ranking their first choice candidate as "1", second choice candidate as "2", and so on. Ballots would first be counted for the candidate that the voter ranked "1." If no candidate received a majority after counting the first-ranked votes, then the candidate with the least amount of "1" votes would be removed from counting. Those ballots that ranked the removed candidate as "1" would then be counted for the voters' "2" ranked candidate. This process would repeat until one candidate received a majority of the remaining votes. Voters could still choose only

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[3] Ex. A, p. 9, secs. 20-21 and p. 15, sec. 37 (these sections represent the main sections establishing an open nonpartisan primary—many other changes are necessitated because of the change to an open nonpartisan primary, including sec.72 that would repeal a number of statutes).

one candidate if they prefer—ballots would not be invalid if the voter did not rank all the available candidates.[4]

The third proposal in 19AKBE would require additional disclosures for contributions to independent expenditure groups and about the sources of contributions in campaigns. It would also require a disclaimer on paid election communications by independent expenditure groups funded by mostly out-of-state money.[5]

Once an initiative application is filed, the Lieutenant Governor has 60 days to review the application and determine whether it is "in proper form."[6] Alaska Statute 15.45.080 lays out the grounds for denial of certification:

> The Lieutenant Governor shall deny certification upon determining in writing that
> (1) the proposed bill to be initiated is not confined to one subject or is otherwise not in the required form;
> (2) the application is not substantially in the required form; or
> (3) there is an insufficient number of qualified sponsors.

After a careful legal review of 19AKBE, Attorney General Kevin Clarkson advised the Lieutenant Governor that the initiative bill contained more than one subject and recommended denial of certification.[7] The Attorney General concluded that other than the violation of the single-subject rule, the initiative was in the proper form. On

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4 Ex. A, p. 10, sec. 24 (this is the main section establishing ranked-choice voting—other statutes also require amendment because of this change).

5 Ex. A, pps. 4-6, secs. 6-7, 9, 11-12.

6 AK Const. art. XI, sec. 2; AS 15.45.070.

7 Ex. B.

August 30, 2019, Lieutenant Governor Meyer denied certification of 19AKBE citing the Attorney General's Opinion.[8]

On September 5, 2019, the sponsors of the initiative filed this lawsuit challenging the Lieutenant Governor's decision. The Lieutenant Governor now moves for summary judgment affirming his determination that the initiative violates the single-subject rule.

III. STANDARD OF REVIEW

The only question before this Court is whether 19AKBE contains more than one subject in violation of the Alaska Constitution such that the Lieutenant Governor properly denied certification. This is a purely legal question that the Court can properly decide on summary judgment. "Summary judgment is proper if there is no genuine factual dispute and the moving party is entitled to judgment as a matter of law."[9] The parties agree that this case does not involve any disputes of material fact and is therefore ripe for a summary judgment decision.

IV. ARGUMENT

Initiative bills, like legislative bills, must comply with the Alaska Constitution's single-subject rule: "[e]very bill shall be confined to one subject."[10] If an initiative bill covers more than one subject, the Lieutenant Governor must deny certification of the

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8 Ex. B.

9 *Devine v. Great Divide Ins. Co.*, 350 P.3d 782, 785-86 (Alaska 2015).

10 AK Const. art. II, sec. 13; *Croft*, 236 P.3d at 372.

initiative because it is not "in proper form."[11] Because 19AKBE encompasses two independent and fundamental changes to the democratic process and also seeks to add unrelated disclosure and disclaimer requirements to campaign finance laws, it would force voters into an all-or-nothing choice on multiple distinct proposals, thereby denying them the ability to fully express their political will. 19AKBE therefore contains more than one subject in violation of the Alaska Constitution.

A. The purpose of the single-subject rule in the initiative context is to protect voters' ability to effectively and meaningfully exercise their right to vote on distinct proposals.

Many state constitutions contain single-subject rules for bills, whether enacted by the legislature or by ballot initiative.[12] The general purpose of such provisions is "the restraint of logrolling in the legislative process."[13] Log-rolling "consists of deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the

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[11] AK Const. art. XI, sec. 2 ("If he finds [the initiative] in proper form he shall so certify. Denial of certification shall be subject to judicial review."); *see also* AS 15.45.040 (requiring that the initiative "bill shall be confined to one subject").

[12] AL Const. art. IV, secs. 45, 71; AZ. Const. art. IV, sec. 13; CA Const. art. II, sec.8 and art. IV, sec. 9; CO Const. art. V, sec. 21; DE Const. art. II, sec. 16; FL Const. art. III, sec. 6; GA Const. art. III, sec. V; HI Const. art. III, sec. 14; ID Const. art. III, sec. 16; IL Const. art. IV, sec. 8(d); IN Const. art. 4, sec. 19; IA Const. art. III, sec. 29; KA Const. art. 2, sec. 16; KY Const. sec. 51; LA Const. art. III, sec. 15(A); MD Const. art. III, sec. 29; MA Const. amend. Art. XLVIII, pt. 2, sec. 3; MI Const. art. IV, sec. 24; MN Const. art. IV, sec. 17; MO Const. art. III, secs. 23 and 50; MT. Const. art. V, sec. 11(3); NE Const. art. III, secs. 2 and 14; NV Const. art. IV, sec. 17; NJ Const. art. IV, sec. VII, para. 4; NM Const. art. IV, sec. 16; NY Const. art. III, sec. 15; ND Const. art. IV, sec. 13; OH Const. art. II, sec. 15(D); OK Const. art. V, sec. 57; OR Const. art. IV, secs. 2, 20; PA Const. art. 3, sec. 3; SC Const. art. III, sec. 17; SD Const. art. III, sec. 21; TN Const. art. II, sec. 17; TX Const. art. III, sec. 35(a); UT Const. art. VI, sec. 22; VA Const. art. IV, sec. 12; WA Const. art. II, sec. 19; WV Const. art. VI, sec. 30; WI Const. art. IV, sec. 18; WY Const. art. III, sec. 24.

[13] *Gellert v. State*, 522 P.2d 1120, 1122 (Alaska 1974).

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necessary support for passage of the measure."[14] When a law contains disparate subjects "it is impossible for the court to assess whether either subject would have received majority support if voted on separately."[15] The purpose of single-subject rules is "to secure to every distinct measure of legislation a separate consideration and decision, dependent solely upon its individual merits."[16] In the ballot initiative context, a single-subject inquiry should consider "whether a measure is drafted in such a way that those voting on it may be required to vote for something of which the voter disapproves in order to obtain approval of an unrelated law."[17]

In 2010, in its most recent single-subject case—*Croft v. Parnell*—the Alaska Supreme Court made clear that in a single-subject analysis of a ballot initiative, the will of the voter has profound importance.[18] Because voters can only cast an up-or-down vote to voice their opinion on a ballot measure, enforcing the single-subject rule protects "the voters' ability to effectively exercise their right to vote by requiring that different proposals be voted on separately."[19] Confining initiative bills to one subject assures both that voters can "express their will through their votes more precisely," and

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14 *Id.*; *see also* Proceedings of the Alaska Constitutional Convention at 1746-47 (discussion of the single-subject requirement and the concern over log-rolling).

15 *City of Burien v. Kiga*, 31 P.3d 659, 663 (Wash. 2001) (en banc).

16 *Minnesota v. Cassidy*, 22 Minn. 312, 322 (1875).

17 *Amalgamated Transit Union Local 587 v. State*, 11 P.3d 762, 784 (Wash. 2000) (en banc), *opinion corrected*, 27 P.3d 608 (Wash. 2001).

18 *Croft*, 236 P.3d. at 372.

19 *Id.*

"prevents the adoption of policies through stealth or fraud, and prevents the passage of measures lacking popular support by means of log-rolling."[20]

The Court concluded that the initiative bill at issue in *Croft*, which sought to publicly fund state elections by increasing the oil production tax, impermissibly encompassed multiple separate subjects.[21] In reviewing the bill, the Court recognized that the single-subject rule protects voters' ability to meaningfully and effectively exercise their right to vote and assures that measures passed by the electorate enjoy majority popular support.[22] The Court held that the initiative "directly implicate[d] one of the main purposes of the single-subject rule—the prevention of log-rolling—in two ways."[23] First, "coupling the approval of a new oil production tax with approval of a program to publicly fund elections deprives the voters of an opportunity to send a clear message on each subject."[24] And second, because the initiative also included a non-binding directive that the legislature transfer funds left over from public elections to the Permanent Fund Dividend, the Court reasoned that "offering the chance of increased Permanent Fund Dividend payments runs the risk of garnering support for the clean elections program from voters who are otherwise indifferent—or even unsupportive—of public funded campaigns."[25]

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20 *Id.*

21 *Id.* at 374.

22 *Id.* at 372-73.

23 *Id.* at 374.

24 *Id.*

25 *Id.*

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Croft thus recognizes the acute dangers of log-rolling in the initiative context, and the Alaska Supreme Court's interest in preventing those harms by enforcing an effective single-subject rule. When confronted with an initiative, voters have only one opportunity to provide an up-or-down vote, regardless of their feelings on any of the distinct proposed provisions.[26] Unlike legislators, they cannot deliberate, propose amendments, and compromise on the relative merits of dissimilar provisions. It is therefore all the more critical for voters to have a clear choice. They must be allowed to vote on different bills covering different subjects separately. The single-subject rule is meant to protect them from having to struggle with how to express their political will through an all-or-nothing vote on a set of multiple distinct proposals.

B. Lumping together the elimination of the party primary, a completely new way of voting, and campaign finance disclosures is log-rolling and disenfranchises voters.

Examining 19AKBE through the lens of these single-subject rule principles reveals that it is exactly the kind of legislation the rule was intended to prevent: it would force voters into an all-or-nothing, up-or-down choice on multiple major, independent subjects about which they might have diverging views.

19AKBE lumps together two fundamental changes to Alaska law—replacing the party primary system with a top-four nonpartisan open primary and instituting an entirely new way of counting general election votes—and then adds in some more

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26 *Id.* at 373 (recognizing that proposing new government program and creation and "soft dedication" of a new revenue source "does not provide the voters with an opportunity to express their approval or disapproval of each distinct proposal.").

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incremental changes to the State's campaign finance disclosure laws. Such dramatic—and very different—reforms should not be packaged together so as to force voters into an all-or-nothing choice because, under *Croft*, "it does not provide the voters with an opportunity to express their approval or disapproval of each distinct proposal."[27]

This is especially true given the way that these proposals will fundamentally reshape Alaska's democratic system. Many voters will likely feel quite differently about the proposal to abolish party primaries and the proposal to reimagine the way Alaskans vote. One voter, a loyal party member, may hate the idea of eliminating the party primary, but may strongly support the idea of being able to rank candidates to ensure her opinion on the election is more fully effectuated. Another voter may love the idea of an open nonpartisan primary to allow all candidates better access, but may hate the idea of ranking candidates, feeling that it may dilute his vote.

But 19AKBE adds yet another subject into the mix, making it even harder for voters to effectively and meaningfully have their voices heard. The initiative bill would add new terms such as "dark money" and "true source" to the campaign finance disclosure laws. These new terms would be included in additional disclosure and disclaimer requirements. Although these may not be wholesale changes to the campaign finance laws, campaign finance is a topic that engenders strong opinions and emotions. It is yet another independent and important subject that voters would be forced to vote on in combination with other proposals, if presented with 19AKBE on the ballot.

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27 *Id.*

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Although the three subjects in 19AKBE may not rise to the level of being as unrelated as those in *Croft*, 19AKBE nonetheless runs afoul of the principles enunciated by the Alaska Supreme Court in that case because it "deprives voters of an opportunity to send a clear message."[28] The subjects of the primary system, the voting process, and campaign finance are, each in their own right, of significant import to Alaskans. And they directly implicate at least three constitutional rights—the right to advocate for the election or defeat of candidates through monetary contributions;[29] the associational right of political parties and political groups to select a standard-bearer;[30] and the right to vote.[31] There is nothing more foundational to our democracy than voting and electing our leaders. How that process should work, how a person's vote is counted, and what role political parties play in that process are questions that impact every Alaskan. To combine those issues in a single initiative with yet another controversial question concerning what burdens should be placed on a person's or entity's right to support or oppose specific candidates is a bridge too far under the single-subject rule.

Indeed, when these same major policy proposals—eliminating party primaries or instituting ranked-choice voting—have been put before voters in other states, they were separated in distinct ballot initiatives, not combined together, let alone tied to additional

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28 *Id.* at 372-73.

29 *See Citizen's United v. Federal Election Commission*, 558 U.S. 310 (2010).

30 *See Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008); *State v. Alaska Democratic Party*, 426 P.3d 901 (Alaska 2018).

31 *See Sonneman v. State*, 969 P.2d 632, 637 (Alaska 1998) ("voting is unquestionably a fundamental right").

proposals such as campaign finance changes.[32] This illustrates that these proposals are separate major reforms that deserve separate consideration by the voters.

The sponsors may argue that voters may not like all of the provisions in any given ballot initiative, and that this is not a reason to find a violation of the single-subject rule. But this would be missing the point. Yes, a voter may, for example, prefer that only two candidates move on to the general election from the open nonpartisan primary, or that voters should only be able to rank first and second-choice candidates in the general election. These are choices the initiative sponsors get to make when determining the details of an initiative proposal. But voters must still be able to effectively exercise their right to vote by voting on entirely different proposals separately.[33] Logically, creating a new primary system is one proposal; creating a new voting process in the general election is another proposal; and changing campaign finance laws is yet another proposal. The details and choices within each proposal may vary, but the single-subject rule requires that each proposal be voted on separately.

19AKBE embodies the kind of log-rolling that the single-subject rule is meant to prevent. The initiative appears designed to cobble together support from distinct constituencies in Alaska to garner the votes necessary for passage by packaging these distinct and fundamental reforms together. If a minority of the voters wants the open

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32 *See* Initiative 872, Secretary of State, State of Washington, filed January 12, 2004, https://www.sos.wa.gov/elections/initiatives/text/i872.pdf; Maine Citizen's Guide to the Referendum Election, Secretary of State, State of Maine, Tuesday, November 8, 2016, pps. 48-49, https://www1.maine.gov/sos/cec/elec/upcoming/citizensguide2016.pdf.

33 *Croft*, 236 P.3d at 372-73.

primary system, another minority wants ranked-choice voting, and yet another minority wants additional disclosures and disclaimers for independent expenditure groups, the entire initiative bill could be enacted. This would fundamentally reshape Alaska's democratic process—and foreclose the possibility of repeal by the legislature for two years[34]—all without true majority support for any of the three distinct proposals. This is precisely what the single-subject rule was intended to prevent.

C. This Court should apply the most recent precedent of *Croft v. Parnell* rather than decades-old cases superseded by *Croft*.

The sponsors will doubtless point to early Alaska Supreme Court cases reviewing the single-subject rule in both legislative and initiative contexts, which applied the rule expansively and declined to invalidate legislation under the rule. The bulk of these cases go back to the 1970's and 1980's.[35] Under these older cases, the Court said that the single-subject rule requires that all parts of a bill, whether enacted by

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34 AK Const. art. XI, sec. 6.

35 *See Gellert v. State*, 522 P.2d 1120 (Alaska 1974) (quoting *Johnson v. Harrison*, 50 N.W. 923, 924 (Minn. 1891) (flood control projects and small boat harbors "all part of a cooperative water resources development program"); *North Slope Borough v. SOHIO*, 585 P.2d 534, 545–46 (Alaska 1978) (various provisions on municipal and state taxes all "relate directly to state taxation"); *Short v. State*, 600 P.2d 20, 22–24 & n. 2 (Alaska 1979) (purposes of new correctional facilities "sufficiently related to the purposes" of new buildings for "state troopers, fish and wildlife protection, a motor vehicles division, [and] a fire prevention division"); *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406, 414–15 (Alaska 1982) (provisions regulating sale of private land, and provisions on state's power to lease state-owned land and zone private lands all "in some respect concern[ ] land"); *Yute Air v. McAlpine*, 698 P.2d 1173, 1175, 1181 (Alaska 1985) (repeal of regulations of "motor and air carriers in Alaska," prohibition on further similar regulation, and requirement that governor seek repeal of federal statute that, among other things, regulates shipping by sea, all embraced by "[t]he subject 'transportation'").

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the legislature or by initiative, "fall under some one general idea" and "be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."[36] The Court said that it will only strike down a bill for violating the single-subject rule if the violation is "substantial and plain."[37]

But throughout these decades-old cases, the Court indicated misgivings about the weakness of the single-subject rule applied in its decisions. In *State v. First National Bank of Anchorage*, for example, the Court concluded that bill sections related to the Uniform Land Sales Practices Act and the Alaska Land Act both fell under the single subject of "land."[38] The Court's discussion, however, illuminated its dissatisfaction with this ruling. Indeed, the Court expressly acknowledged:

> Were we writing on a clean slate, we would be inclined to find this subject impermissibly broad. Permitting such breadth under the one-subject rule could conceivably be misconstrued as a sanction for legislation embracing the whole body of law. Nevertheless, while the issue is indeed close, we are unable to say that the legislature has transgressed the limits of article II, section 13 established by prior decisions of this court.[39]

A few years later, the Court reiterated its skepticism of its weak single-subject test, noting the unique risks it posed in the initiative context. In *Yute Air Alaska, Inc. v. McAlpine*, the Court held that an initiative titled "Reducing Government Regulation of Transportation," satisfied the single-subject test even though the bill sought to repeal

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36 *Gellert*, 522 P.2d at 1123.

37 *Croft,* 236 P.3d at 373.

38 660 P.2d at 414-15.

39 *Id.* at 415.

statutes regulating motor and air carriers in Alaska, open the carrier business further, prohibit municipal regulation of such activities, and require the governor to seek repeal of the federal statute requiring the use of United States vessels for shipping goods between U.S. ports.[40] But the Court again expressed reservations.[41] And in a vigorous dissent, Justice Moore noted that the Court "mistakenly continued to give the rule such an extremely liberal interpretation that the rule has become a farce," leading it to become "almost meaningless," whereby even the most disparate subjects could be "enfolded within the cloak of a broad generality." [42]

Justice Moore recognized that application of the single-subject rule is to some degree context-specific.[43] For example, when a bill becomes a law through an initiative, "the problems the single-subject rule was designed to prevent are exacerbated," and "[t]here is a greater danger of logrolling, the deliberate intermingling of issues to increase the likelihood of an initiative's passage, and there is a greater opportunity for 'inadvertence, stealth and fraud' in the enactment-by-initiative process."[44] This differs from the legislative process which involves an "elaborate procedure by which a bill originates, is reviewed by legislators and experts, and ultimately becomes law. There are no such safeguards, no such review process, between the filing of an initiative

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40 698 P.2d at 1174.

41 *Id.*

42 *Id.* at 1182-83 (Moore, J., dissenting).

43 *Id.* at 1184 (Moore, J., dissenting).

44 *Id.*

petition and its submission to the electorate."[45] Justice Moore observed that "[b]y seriously implementing the single-subject rule, this court would mandate that the essence of the initiative process be respected. We would insure that the will of the people is accurately and effectively expressed."[46]

Over two decades later, in *Croft*, the Alaska Supreme Court was faced once again with the question of how to apply the single-subject rule in the context of the initiative process.[47] Although the Court in *Croft* did not expressly overturn its older single-subject rule precedent, it grounded its decision in the specific purpose of the single-subject rule in protecting the voters, giving new guidance on how to apply the rule in the specific context of ballot initiatives. The Court's decision used language reminiscent of Justice Moore's dissent in *Yute Air Alaska, Inc. v. McAlpine*.[48] According to the Court in *Croft*, the single-subject rule in the context of an initiative bill is intended to protect "the voters' ability to effectively exercise their right to vote by requiring that different proposals be voted on separately."[49]

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45 *Id.* at 1185 (Moore, J., dissenting).

46 *Id.*

47 *Croft*, 236 P.3d 369.

48 *Yute*, 698 P.2d at 1183-1185.

49 *Croft*, 236 P.3d at 372.

Because *Croft* is the Alaska Supreme Court's most recent elucidation of the rule, this Court should apply it here rather than looking to older, superseded cases.[50]

V. CONCLUSION

For these reasons, the Court should grant the State's motion for summary judgment and uphold the denial of certification.

DATED September 30, 2019.

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[50] The State recognizes that this Court cannot overturn Alaska Supreme Court precedent and does not ask this Court to do so—instead, it asks this Court to follow *Croft*, which is the Alaska Supreme Court's most recent and on-point precedent. But the State also preserves its right to argue on appeal that to the extent the Court's earlier cases are binding despite *Croft*, the standard for overturning stare decisis is met here. "[S]tare decisis is a practical, flexible command that balances our community's competing interests in the stability of legal norms and the need to adapt those norms to society's changing demands." *Pratt & Whitney Canada, Inc. v. Sheehan*, 852 P.2d 1173, 1175 (Alaska 1993). To the extent that the Alaska Supreme Court's precedents would allow voters to be forced into an all-or-nothing choice to accept or reject 19AKBE's package of distinct provisions, those precedents are originally erroneous and unworkable in practice, and more good than harm would result from a departure from precedent. Alaskan voters deserve an effective single-subject rule, as *Croft* recognizes.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER ELECTIONS, Plaintiff, v. KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and the STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-19-09704 CI

OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND REPLY IN SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Defendants' Kevin Meyer, Lieutenant Governor of the State of Alaska, and the State of Alaska, Division of Elections ("Defendants") effectively concede that Plaintiff Alaskans for Better Elections ("ABE") must prevail under decades of Alaska Supreme Court precedent applying the single-subject rule by relying solely on the argument that

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Croft v. Parnell "superseded" all prior case law. It did not. And as Defendants also concede,[1] the initiative at issue in *Croft* had components far more unrelated than those at issue here. 19AKBE must be certified even if *Croft* were the only case this court had to consider. Contrary to the arguments of Defendants, there is no different constitutional standard for the single-subject rule as applied to initiatives than legislation, and there is no different constitutional standard for initiatives that involve constitutional rights. Because 19AKBE is confined to "one general subject" — reforming and improving Alaska's elections — and 19AKBE does not "substantial[ly] and "plain[ly]" violate the single-subject rule, this Court must grant ABE's request for summary judgment certifying the measure and ordering release of the petition signature booklets.

II. ARGUMENT

A. Laws Enacted by Initiative Are Not Subject to a Higher Single-Subject Standard Than Laws Enacted Through The Legislature.

Defendants argue that because initiatives do not have the benefit of committee discussions and amendments, they should be held to a higher single-subject rule standard.[2] But this Court cannot adopt the Defendants' reasoning as a matter of law.

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1 "Although the three subjects in 19AKBE may not rise to the level of being as unrelated as those in Croft..." Defendants' Motion for Summary Judgment (hereinafter "Defendants' Motion") at 11.

2 Defendants' Motion at 9, 14-16.

Defendants cite no binding authority. Instead, Defendants cite only expressed "misgivings" in published opinions, dissents, and Attorney General Kevin Clarkson's recent opinion.[3] But requiring initiatives to clear a higher hurdle with respect to the single-subject rule would violate the Alaska Constitution by placing initiatives in a separate category from legislation.[4] The Alaska Supreme Court has made it clear that initiatives are to be treated, at a minimum,[5] equally to legislation for purposes of the single-subject rule.[6] This is a critical point that Defendants attempt to sidestep—*any* narrowing of the single-subject rule would also necessarily have a profound effect on the ability of the Legislature itself to do business.[7]

Art. XII, sec. 11 of the Alaska Constitution gives initiatives equal "law-making powers" as the legislature.[8] The Alaska Supreme Court has indicated that initiatives

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3 Defendants' Motion at 14.

4 Alaska Const. art. XII, § 11; *see Yute Air v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985) ("A one subject rule for initiatives which is more restrictive than the rule for legislative action is not permitted.").

5 *See Yute Air*, 698 P.2d at 1181 ("[The] contention . . . that the single subject requirement should be more strictly applied in the initiative (as opposed to legislative) context not only is adverse to our deferential attitude toward initiatives, it also ignores the explicit constitutional directive to the contrary.").

6 *Croft v. Parnell*, 236 P.3d 369, 371 n.6 (Alaska 2010) (quoting *Yute Air*, 698 P.2d at 1179 n.2).

7 *See* Plaintiffs' Memorandum in Support of Cross-Motion for Summary Judgment at 20-21 & n. 73, 74 (hereinafter "Plaintiffs' Memorandum").

8 *Croft*, 236 P.3d at 371 n.6 ("We have previously explained that, regardless of AS 15.45.040, 'the [a]rticle II restriction . . . applies to initiatives' under article XII, section 11, which provides that the people may exercise the legislature's law-making powers through the initiative." (quoting *Yute Air Alaska Inc.*, 698 P.2d at 1179 n.2)); *see* Alaska Const. art. XXII, § 11 ("Unless clearly inapplicable, the law-making powers assigned to the

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actually have greater leeway than the legislature when it comes to the single-subject rule.[9] 19AKBE was drafted in reliance on the Alaska Constitution and the Alaska Supreme Court's longstanding precedent. Accordingly, it is lawful and this Court must reject Defendants' baseless request to unconstitutionally relegate initiatives to second-class status with respect to the single-subject rule.

B. The Single-Subject Rule Should Not Be Analyzed in a Constitutional Rights Framework.

Defendants also argue, without citing precedent, that because multiple constitutional rights are implicated through 19AKBE, it violates the single-subject rule.[10] But not only do the Defendants fail to cite *any* examples where a court has undergone this type of analysis in the single-subject rule context, it is also a completely new and illogical legal test.

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legislature may be exercised by the people through initiative, subject to the limitations of Article XI.").

[9] *See Yute Air*, 698 P.2d at 1181 ("[A]n initiative is an act of direct democracy guaranteed by our constitution. Because petitions are often prepared by inexpert sponsors who nonetheless espouse worthy or popular causes, or both, courts are reluctant to invalidate them in cases of merely doubtful legality. 'In matters of initiative and referendum, we have previously recognized that the people are exercising a power reserved to them by the constitution and the laws of the state, and that the constitutional and statutory provisions under which they proceed should be liberally construed.' " (quoting *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974))); *see also id.* ("[The] contention . . . that the single subject requirement should be more strictly applied in the initiative (as opposed to legislative) context not only is adverse to our deferential attitude toward initiatives, it also ignores the explicit constitutional directive to the contrary.").

[10] *See* Defendants' Motion at 1, 11.

Reviewing initiatives based on constitutional rights has never been, and should not be, a consideration in a single-subject analysis. After all, many types of legislation implicate a host of constitutional rights without violating the single-subject rule.[11] Furthermore, the question has always been whether a law violates a single *subject*, not whether a law implicates multiple *constitutional rights*.[12] The Alaska Supreme Court has never applied the single-subject rule from this perspective, and this court must decline to do so here.

C. 19AKBE Does Not Substantially or Plainly Violate The Single-Subject Rule Because It Addresses One General Subject Through Three Logically-Connected Proposed Changes.

19AKBE is about one general subject: improving Alaska's elections. Under long-standing Alaska Supreme Court precedent, there is no violation of the single-subject rule because the three substantive reforms 19AKBE proposes are "logically" connected "in popular understanding" to reform and improve Alaska's elections.[13] Changing campaign disclosure requirements, creating an open primary, and adopting

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[11] For example, almost any criminal justice bill implicates, at a minimum: (1) the Fourteenth Amendment's Due Process and Equal Protection Clauses; (2) the Fourth Amendment's protection against unreasonable searches and seizures; (3) the Fifth Amendment's due process rights; (4) the Sixth Amendment's right to a speedy trial and right to counsel; and (5) the Eighth Amendment's protection from cruel and unusual punishment.

[12] *See* Alaska Const. art. II, § 13.

[13] *Short v. State,* 600 P.2d 20, 24 (Alaska 1979) (quoting *Gellert v. State*, 522 P.2d 1120, 1123 (Alaska 1974)) (citing *Evans ex rel. Kutch v. State*, 56 P.3d 1046, 1069 (Alaska 2002); *Yute Air*, 698 P.2d at 1180-81; *State v. First Nat'l Bank of Anchorage*, 660 P.2d 406, 415 (Alaska 1982)).

"ranked choice voting" for general elections are all logically understood as "relat[ing] to a broader, single subject" of improving Alaska's elections.[14]

The fact that 19AKBE presents a package of election reforms does not mean it violates the single-subject rule; 19AKBE is a *single* election-reform package which proposes substantive changes to only one title in Alaska's Statutes.[15] 19AKBE presents voters with a clear choice to improve elections in Alaska; it is not comprised of "entirely different proposals" with an improper goal of "log-rolling" as suggested by Defendants.[16] The alternative of requiring two or three separate initiatives to place the same election-reform package before voters would run counter to Supreme Court precedent by being "unduly [restrictive] in scope . . . , thereby multiplying and complicating the number of necessary enactment[s] and their interrelationships."[17]

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14 *Croft*, 236 P.3d at 372 (citing *Evans*, 56 P.3d at 1049, 1070; *Yute Air*, 698 P.2d at 1175, 1181; *First Nat'l Bank of Anchorage*, 660 P.2d at 414-15; *Short*, 600 P.2d at 22-24 & n.2; *North Slope Borough v. SOHIO Petroleum Corp.*, 585 P.2d 534, 545-46 (Alaska 1978); *Gellert*, 522 P.2d at 1123; *Suber v. Alaska State Bond Comm.*, 414 P.2d 546, 557 & n.23 (Alaska 1966)).

15 Even if 19AKBE's proposed changes spanned multiple titles in Alaska's statutes, it would not necessarily violate the single-subject rule. *See Yute Air*, 698 P.2d at 1181 ("Many laws embracing a single subject direct more than one governmental department to act.").

16 Defendants' Motion at 12.

17 *Croft*, 236 P.3d at 372 (third alteration in original) (quoting *Gellert*, 522 P.2d at 1122) (citing *Evans*, 56 P.3d at 1069; *Yute Air*, 698 P.2d at 1183 (Moore, J., dissenting); *Short*, 600 P.2d at 23); *see also Yute Air*, 698 P.2d at 1181 ("[T]he sponsors of the initiative have relied on our precedents in preparing the present proposition and undertaking the considerable expense and time and effort needed to place it on the ballot." (first citing AS 15.45.140; then citing AS 15.45.130)).

The Alaska Supreme Court has given initiatives and the legislature "considerable breadth" to work within the single-subject rule to "balance the rule's purpose against the need for efficiency in the legislative process."[18] Because an initiative should be rejected only if it "substantial[ly] and plain[ly]" violates the single-subject rule, the question before this court is not even a close call. 19AKBE's single subject of reforming and improving elections clearly fits within the framework of previous initiatives and laws the Alaska Supreme Court previously upheld.[19]

The Defendants rely solely on *Croft v. Parnell,*[20] and the language in *Croft* that "[t]he single-subject rule protects the voters' ability to effectively exercise their right to vote by requiring that different proposals be voted on separately" to "prevent[] the passage of measures lacking popular support by means of log-rolling."[21] From the outset, it is clear that Defendants' attempt to raise an alarm regarding the dangers of

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18 *Croft*, 236 P.3d at 372-73 (quoting *Gellert*, 522 P.2d at 1122).

19 *See, e.g.*, *Evans*, 56 P.3d at 1049, 1070 (permitting a single-subject of "civil actions"); *Yute Air*, 698 P.2d at 1175, 1181 (concluding an overarching topic of "transportation" did not violate the single-subject rule); *First Nat'l Bank of Anchorage*, 660 P.2d at 414-15 (declining to find a single-subject rule violation on the broad topic of "land" where two previously proposed pieces of legislation were combined into one); *Short*, 600 P.2d at 22-24 & n.2 (concluding "protection of the public" was a valid single subject); *SOHIO*, 585 P.2d at 545-46 (determining that "state taxation" does not run afoul with the single-subject rule); *Gellert*, 522 P.2d at 1123 (holding that "development of water resources" was a permissible single subject).

20 *See* Defendants' Motion for at 17 ("Because *Croft* is the Alaska Supreme Court's most recent elucidation of the [single-subject] rule, this Court should apply it here . . . .").

21 *Croft*, 236 P.3d at 372 (citing *Gellert v. State*, 522 P.2d 1120, 1122 (Alaska 1974)).

"log-rolling" with respect to 19AKBE[22] is based in pure conjecture. Defendants provide no evidence or even a logical argument explaining how one element of 19AKBE is clearly much more favored than any of the others.[23] Indeed, there is no such evidence, because the opposite is true—by all accounts the three reforms contained in the measure all share broad support.[24]

Furthermore, *Croft* did not overrule or supersede prior case law on the single-subject rule. The Supreme Court in *Croft* emphasized that it "construe[s] the single-subject 'provision . . . with considerable breadth,' "[25] and that it will "strike down challenged proposals *only* when the violation is 'substantial and plain.' "[26] The *Croft* Court reiterated its longstanding precedent of "resolv[ing single-subject rule] doubts in favor of validity," and did not "supersede" prior authority.[27]

But 19AKBE must be certified even if *Croft* were the only case this court must consider. Defendants concede that the elements of 19AKBE do "not rise to the level of being as unrelated to those in *Croft*."[28] ABE agrees, and that concession confirms

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22 Defendants' Memorandum at 12-13.
23 *Id.*
24 Plaintiffs' Memorandum at 21, n. 75.
25 *Id.* at 372-73 (second alteration in original) (quoting *Gellert*, 522 P.2d at 1122).
26 *Id.* at 373 (emphasis added) (quoting *Gellert*, 522 P.2d at 1122) (citing *Evans*, 56 P.3d at 1069; *First Nat'l Bank of Anchorage*, 660 P.2d at 415; *Short*, 600 P.2d at 23 nn. 7 & 8; *SOHIO*, 585 P.2d at 545).
27 *Id.* (quoting *Gellert*, 522 P.2d at 1122) (citing *Evans*, 56 P.3d at 1069; *First Nat'l Bank of Anchorage*, 660 P.2d at 415; *Short*, 600 P.2d at 23 nn. 7 & 8; *SOHIO*, 585 P.2d at 545).
28 Defendants' Motion at 11.

that 19AKEBE must be certified under *Croft*. In *Croft*, the initiative sponsors sought to: (1) publicly fund campaigns; (2) increase taxes on the oil industry; (3) while allowing for any excess funds collected to go toward augmenting Permanent Fund Dividends.[29] Looking at this unrelated, illogically connected list of three proposed changes, one can quickly find a "substantial and plain" violation of the single-subject rule.[30] It is instructive that the elements of the *Croft* initiative did not "work together" in any real way. That is, a publicly-funded campaign would have functioned exactly the same regardless of how it was paid for—whether or not there was an additional assessment on the oil industry. Indeed, given the Alaska Constitution's prohibition on dedicated funds, the proceeds from such a tax would simply go into the General Fund in any event. Likewise, the language indicating that extra funds would be tacked onto Alaskan's PFD checks was clear pandering—a clear example of "log-rolling"—again having no impact on how public financing of campaigns would work.

In contrast to the measure in *Croft*, the three elements of 19AKBE each reinforce and make the other parts work better. The RCV general election will work better when there are up to four choices on the ballot thanks to the open "top 4" primary election. Without that open primary feeding four candidates into the general, voters

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29 *Croft*, 236 P.3d at 370-71.

30 *Id.* at 373 (quoting *Gellert*, 522 P.2d at 1122) (citing *Evans*, 56 P.3d at 1069; *Yute Air*, 698 P.2d at 1180-81; *First Nat'l Bank of Anchorage*, 660 P.2d at 415; *Short*, 600 P.2d at 24; *SOHIO*, 585 P.2d at 545).

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might just end up with the status quo—two candidates, one from each party, to choose from. In that event, RCV wouldn't function properly, or at all. Likewise, as we move away from party primary elections, it becomes more important than ever that voters have good and accurate information regarding who is paying for campaign communications. The additional and more timely campaign disclosures will allow voters to be more educated as they exercise their choices in both the primary *and* general elections. 19AKBE makes a substantial, but interconnected reform of the election system.

In *Croft*, it took a substantial and plain violation for the Alaska Supreme Court to strike down a proposed initiative or law for violating the single-subject rule.[31] In contrast to 19AKBE's goal of improving elections, there was no similarly succinct and unifying way to describe the disjointed initiative proposed in *Croft*.

V. CONCLUSION

19AKBE concerns one general subject which does not substantially or plainly violate the single-subject rule. The Attorney General advised the Lieutenant Governor to reject 19AKBE based on what he wished the law were, not on what it is. As the final footnote in Defendants' Motion for Summary Judgment makes clear, this administration seeks to have the Alaska Supreme Court reverse course and adopt the

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31 *See id.* at 374.

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dissenting opinion in *Yute*. But just as the Lieutenant Governor should have certified the initiative under current binding precedent, this court is also bound by precedent and must grant summary judgment to ABE.

Respectfully submitted this 10th day of October, 2019.

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I hereby certify that on this 10th day of October 2019, a true and correct copy of the foregoing was sent to the following via U.S. Mail and Email:

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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ALASKANS FOR BETTER ELECTIONS, Plaintiff, v. KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and the STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	)	Case No. 3AN-19-09704 CI

DEFENDANTS' REPLY ON SUMMARY JUDGMENT

I. INTRODUCTION

The Attorney General's Opinion concluding that 19AKBE fails to comply with the single-subject rule was grounded in the most recent and relevant precedent from the Alaska Supreme Court.[1] By contrast, the sponsors rely on a decades-old case where both the majority and the dissent expressed misgivings about the Court's weak application of the single-subject rule up to that point.[2]

The precedent that the State relies on—*Croft*—clarifies that the single-subject rule in the initiative context is supposed to empower voters to express their will more precisely by voting on distinct proposals separately.[3] 19AKBE encompasses three

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1 *Croft v. Parnell*, 236 P.3d 369 (Alaska 2010).

2 *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173 (Alaska 1985).

3 *Croft*, 236 P.3d at 372.

distinct proposals, or, as the sponsors call them, "reforms," that would radically change the democratic process in Alaska. Although the sponsors claim to champion voter voice and choice, their decision to lump these three distinct proposals into a single ballot initiative would do just the opposite—forcing voters into one all-or-nothing choice rather than presenting each "reform" as a separate choice. The Court should follow *Croft* and allow voters to express their will more precisely by voting on these three proposals separately.

II. ARGUMENT

A. The old cases the sponsors rely on—in which the Court acknowledged applying a meaningless standard—have been superseded by *Croft*.

Under *Croft*, an initiative violates the single-subject rule if it "does not provide the voters with an opportunity to express their approval or disapproval of each distinct proposal."[4] Multi-faceted initiatives on absurdly broad subjects like "land"—which earlier case law might have allowed to reach the ballot—clearly would not allow voters "to express their approval or disapproval of each distinct proposal" as *Croft* required. This Court should therefore follow *Croft* in evaluating an initiative for compliance with the single-subject rule rather than the older cases that the sponsors cite.

Croft recognized that the initiative context matters. A single-subject rule for initiatives that would allow measures to cover—as the sponsors put it—"exceptionally broad subjects such as 'land,' 'state taxation,' 'protection of the public,' 'development of water resources,' 'civil actions,' and 'transportation,'" would do nothing to protect

[4] *Id.* at 373.

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voters' ability to effectively exercise their votes. [P's MSJ at 9-10] With an initiative, voters have only one chance to express their will via a single up-or-down vote at the ballot box—there is no legislative record, no process to propose or debate amendments, no opportunity to state reasons on the record explaining a vote. Yet under the sponsors' view, voters could be asked to approve or disapprove a multi-faceted initiative covering, for example, veterinary practices, farm regulations, and moose hunting, all under the general topic of "animals." An initiative covering such controversial topics as abortion regulations, sex offender registration, and camera-assisted automatic traffic enforcement, could all fall under the general topic of "privacy." Allowing this type of broad, general topic to govern such patently dissimilar and unique issues in the initiative context does nothing to advance the single-subject rule's purpose of allowing voters to express their political will more precisely. On the contrary, it undermines it.

Under *Croft*, the Court can enforce an effective single-subject rule rather than being stuck with the sponsors' ineffective "anything goes" rule. As explained in the State's Motion for Summary Judgment, the Alaska Supreme Court decided *Croft* after decades of having indicated misgivings about its prior practice of allowing exceptionally broad "subjects" in its single-subject jurisprudence, especially in the context of initiatives. With *Croft*, the Court reinvigorated the single-subject rule, at least in the context of a ballot initiative, where the voters have an all-or-nothing choice and there is no give-and-take deliberative process. Under *Croft*, the single-subject rule in

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this context must be applied to protect "the voters' ability to effectively exercise their right to vote by requiring that different proposals be voted on separately."[5]

The sponsors assert that the single-subject rule must be applied identically in the legislative and initiative contexts, ignoring critical differences in the processes followed and the very different record built in the two contexts. [P's MSJ at 7] Indeed, Justice Moore's dissent in *Yute* recognized that the legislative process and the initiative process differ in significant respects, and this differing context must be taken into account when applying the single-subject rule and determining whether the provisions in a bill are logically interrelated such that it encompasses only one subject.[6] In the legislative context, there is an "elaborate procedure by which a bill originates" involving review "by legislators and legal experts."[7] This elaborate procedure allows for amendments by which legislators can debate and vote upon discrete parts of a bill as it progresses.

This all becomes part of the legislative history that shows how the bill came to be and what was intended by its provisions. This process also gives legislators and the public insight into why different provisions are put in the bill and how the provisions relate to one another. In this context, it makes sense to give deference to the legislature's determination that the various provisions are related enough to include in one bill and not multiple bills. However, in the initiative context, "[t]here are no such

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5 *Id.* at 372.

6 *Yute*, 698 P.2d at 1184 (Moore, J. dissenting).

7 *Id.*

safeguards, no such review process" that allows the voters the opportunity to weigh in and understand how the provisions relate to one another.[8] Instead, the voters have no say in how the initiative was put together and they must take or leave the whole of it without the ability to separately consider discrete subparts or to prune the law by way of amendment.

The sponsors are correct that in *Croft*, neither party argued that a different single-subject standard applies to initiatives.[9] And because neither party raised that issue, the Court did not directly address it, noting only that the single-subject rule does indeed apply to initiatives.[10] But the Court's reasoning recognized that different considerations apply in the initiative context. For example, the Court discussed—for the first time—the risk of log-rolling with initiatives.[11] Log-rolling is particularly dangerous in the initiative context because voters cannot take any action other than to approve or disapprove an entire initiative, meaning that an unpopular proposal could easily "piggy back" on a highly popular but unrelated proposal so long as the two could be combined under some abstract topic—like privacy. The single-subject rule rightfully prevents this from happening, serving as a barrier to "the adoption of policies through stealth or fraud" and "the passage of measures lacking popular support," and allowing "voters to express their will through their votes more precisely" through multiple votes.[12]

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8 *Id.* at 1185 (Moore, J. dissenting).

9 *Croft*, 236 P.2d at 371 n.6.

10 *Id.*

11 *Id.* at 372-374.

12 *Id.* at 372.

B. Enforcing *Croft*'s single-subject rule for initiatives will support—not inhibit—effective direct democracy.

Requiring initiative sponsors to separate distinct proposals into distinct initiatives will not inhibit direct democracy or burden the initiative process—on the contrary, it improves the process by helping effectuate the will of the voters.

The sponsors argue that the single-subject rule should be applied more leniently in the initiative context because "sponsors lack the same resources and sophistication as the legislature." [P's MSJ at 18] But sponsors, in fact, acknowledge that the initiative bill includes three distinct substantive reforms, illustrating that they are capable of discerning different subjects. [P's MSJ at 11] To argue that they are not sophisticated enough is disingenuous based on their own description of the initiative.

They also fail to explain why separating their proposals would be a serious burden. And any administrative burden sponsors might arguably suffer would be more than offset by the benefit to voters, who would be freed to express their will more precisely on critical issues of the day. Certainly, if their three proposals each separately enjoy majority support, as they assert [P's MSJ at 21 n.75], they would enjoy this same support if separated into distinct initiatives. Each application could have the same 100 sponsors. Nothing in the law prohibits this. Thus, if the Court were to affirm the denial of certification, the sponsors could easily pursue their three proposals as three initiatives. In fact, this is what occurred in *Croft*—the sponsors submitted a separate initiative covering only one subject, the Department of Law recommended certification

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of that initiative, and it went on the ballot.[13] The sponsors here could similarly separate their distinct proposals and allow voters to consider them on their distinct merits and deficiencies—without the danger of log-rolling. 19AKBE is still at a very early stage in the process—the sponsors have not yet gathered signatures, the measure has not reached the ballot, and voters have not yet voted on it. Enforcing an effective single-subject rule now would not prevent the sponsors from moving forward. It would, however, allow the voters to more meaningfully and effectively exercise their right to vote on the separate proposals.

Nor would requiring the sponsors to separate their three distinct proposals into three distinct ballot initiatives contravene the constitutional provision stating that "[u]nless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative."[14] Under an effective single-subject rule, Alaskan voters retain the same exact power to enact the same exact substantive legal reforms—they just need to do so by voting on distinct proposals separately as the constitution requires.

Not only does separating distinct proposals not inhibit direct democracy, it actually supports it—as *Croft* recognized, confining initiative bills to one subject assures that voters can "express their will through their votes more precisely."[15] The single-subject rule protects "the voters' ability to effectively exercise their right to vote

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13 2007 Op. Att'y Gen. (July 19), 2007 WL 2333358.

14 AK Const. art. XII, sec. 11.

15 *Croft*, 236 P.3d at 372.

by requiring that different proposals be voted on separately."[16] *Croft* makes clear that the single-subject rule is about protecting voter choice—not inhibiting it.

Enforcing a single-subject rule and thereby empowering voters to more precisely express their will does not "condescend[] to voters," as the sponsors assert. [P's MSJ at 17] The State does not assume that voters are uninformed or that they are unable to understand the proposals put before them. No matter how intelligent and well-informed a voter is, she can only cast a single, up-or-down vote on a single initiative. And if that single initiative encompasses multiple discrete proposals or "reforms" about which she has different opinions, she will be forced to struggle over how to meaningfully express her political will—for example, does she favor ranked-choice voting strongly enough to stomach supporting an open, nonpartisan primary, which she vehemently opposes? Or should she vote against the proposal she favors because it is tied to one she dislikes? Separating the three subjects into three separate initiatives empowers her to vote in full accordance with her true preferences rather than being needlessly forced to make calculated trade-offs and vote against her own interests on a subject of critical import.

At most, requiring the sponsors to submit their three major distinct reforms in three initiatives creates a small administrative hurdle, but fully protects voter choice—exactly what the single-subject requirement was intended to do.

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16 *Id.*

C. 19AKBE contains three distinct proposals that Alaskan voters should be permitted to vote on separately under *Croft*.

The sponsors assert that their three proposals constitute a "narrow thread of election law reforms" that "seek to elevate the voice of Alaska voters by giving them not only more choices in their elections, but by preventing those choices from being unduly dictated or unknowingly influenced by political parties or large, well-financed interests." [P's MSJ at 11] But even sentences like this one—in which the sponsors attempt to identify a single common "thread" linking their proposals—inherently identify and describe three readily distinct substantive legal reforms. [*Id.* at 11, 15]

Indeed, the sponsors themselves explicitly acknowledge that their initiative contains three distinct substantive legal reforms. [P's MSJ at 11] The fact that the parties agree on this basic fact—even though the initiative bill's 74 sections would amend far more than three statutes—demonstrates that a court may discern the different "subjects" that an initiative encompasses, and that sponsors themselves can discern the different subjects. In *Croft*, for example, the Court considered whether the initiative bill would appeal to different constituencies; whether voters would have an opportunity to "send a clear message on each subject;" whether there is a potential that the initiative "runs the risk of garnering support" for one proposal from voters "who are otherwise indifferent—or even unsupportive—of" another proposal in the same initiative.[17]

The Court in *Croft* focused on whether the different parts of the initiative were logically interrelated, such that making one change to the law informed or sensibly

[17] *Id.* at 374.

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resulted in another change. Although the sponsors in *Croft* asserted that all of the provisions fell under the general subject of "clean elections," the Court looked at how the provisions changing oil and gas taxes actually interfaced with the provisions on public funding of elections, finding that they were not logically connected. Courts and initiative sponsors can readily apply this analysis from *Croft*—looking at whether provisions are logically interrelated—to determine whether an initiative addresses a single subject.

The sponsors assert that their three proposed reforms are "interconnected," and "work together and augment each other," but fail to explain how so—they simply elaborate on why they view all three as good ideas. [P's MSJ at 11, 14-15] But the three proposals are not actually "connected" through cross-references or other logical reliance. None depends on the others to function properly, so each could—and should—be enacted separately in a fully coherent fashion. Nor do they constitute different implementation details of the same overarching reform, such as the set of statutory amendments that are necessary to create a ranked-choice voting system, or the change to campaign finance laws necessary to recognize that candidates for governor and lieutenant governor would have to run jointly in an open nonpartisan primary. Although this latter change concerns campaign finance, it is merely an implementation detail of an open nonpartisan primary proposal—not a separate reform. By contrast, 19AKBE's changes to campaign finance disclosure laws that are related to "dark money" are neither implementation details of an open nonpartisan primary system nor of a ranked-choice voting system. They are substantively separate reforms.

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The sponsors' use of the term "better elections" does not create the bridge necessary to connect the three distinct subjects in 19AKBE. "Better" means nothing in this context because it is a matter for reasonable debate whether 19AKBE makes anything about elections "better," and any change to the law is presumably an attempt to make it "better." And "elections" is a broad area of the law that does nothing to facilitate precision in voter choice about the underlying substantive reforms, akin to "land" and the other expansive subjects approved before *Croft*.

Nor is "empowering voters" a single "subject" that encompasses these three separate reforms. [P's MSJ at 15] The entire election system is designed to empower voters and effectuate their votes. Just as reasonable people would disagree on what would make the election system "better," they would disagree on what reforms would more fully "empower voters." Here, voters may well think that one but not all of these reforms would make elections "better," and yet they will be forced to vote to approve or reject them all as a whole.

The sponsors reliance on these vague, overarching "subjects" is similar to the unsuccessful attempt of the sponsors in *Croft* to bridge the single-subject gap using the soft dedication of their initiative's new oil-and-gas tax revenue to fund their initiative's clean elections program.[18] Those sponsors also argued that their new oil production tax was "related to the subject of 'clean elections' because 'the oil industry and the oil field services companies … exert a tremendous and undue influence on Alaska politics and politicians,' and contributions from these groups have been 'fueling [electoral]

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[18] *Id.*

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campaigns in Alaska for years.'"[19] The Court soundly dismissed this logic, noting that "other voters may be equally driven by strong feelings of support for the jobs and tax revenue generated by the oil industry in Alaska."[20] The attempt to tie together distinct proposals with a broad concept such as "clean elections" did not work in *Croft* and it does not work here.

III. CONCLUSION

Despite the sponsors' assertion, there is controlling precedent supporting the State's position—namely *Croft*, the Alaska Supreme Court's most recent review of an initiative under the single subject rule. Like the initiative in *Croft*, 19AKBE includes three distinct proposals and appears aimed to garner majority support by appealing to different voters on different significant reforms. For these reasons, the Court should grant the State's motion for summary judgment and uphold the denial of certification.

DATED October 10, 2019.

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19 *Id.*

20 *Id.*

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER ELECTIONS, Plaintiff,	)	
vs.	)	
KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	)	Case No. 3AN-19-09704 CI

ORDER GRANTING PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff and Defendants both filed motions for summary judgment, agreeing that there are no disputed facts and that the sole legal issue is whether the Alaska's Better Elections Initiative ("19AKBE") violates the single-subject rule articulated in Article II, section 13 of the Alaska Constitution and AS 15.45.040. Oral argument on the motions was held on October 21, 2019. Having considered the cross-motions, oppositions, and oral argument, the Court grants Plaintiff's cross-motion for summary judgment and denies Defendants' motion for summary judgment.

I. Background

Plaintiff Alaskans for Better Elections ("ABE") is a ballot initiative committee challenging the Lieutenant Governor's refusal to certify the initiative for the ballot. The

Lieutenant Governor denied certification because he determined that the initiative violated the single-subject requirement of AS 15.45.040. Plaintiff filed a Complaint for Declaratory and Injunctive Relief against Lieutenant Governor Keven Meyer and the State of Alaska, Division of Elections (collectively, "Lieutenant Governor") seeking a declaration that the Lieutenant Governor's determination that 19AKBE addresses more than one subject in violation of the Alaska Constitution is incorrect as a matter of law and that 19AKBE is in the proper form. ABE further seeks an order that 19AKBE be certified and that the Lieutenant Governor must distribute petition signature booklets immediately.

ABE filed the initiative petition with the Division of Elections on July 3, 2019. 19AKBE is an initiative to:

> PROHIBIT THE USE OF DARK MONEY BY INDEPENDENT EXPENDITURE GROUPS WORKING TO INFLUENCE CANDIDATE ELECTIONS IN ALASKA AND REQUIRE ADDITIONAL DISCLOSURES BY THESE GROUPS; ESTABLISH A NONPARTISAN AND OPEN TOP FOUR PRIMARY ELECTION SYSTEM; CHANGE APPOINTMENT PROCEDURES FOR CERTAIN ELECTION BOARDS AND WATCHERS AND THE ALASKA PUBLIC OFFICES COMMISSION; ESTABLISH A RANKED-CHOICE GENERAL ELECTION SYSTEM; SUPPORT AN AMENDMENT TO THE UNITED STATES CONSTITUTION TO ALLOW CITIZENS TO REGULATE MONEY IN ELECTIONS; REPEAL SPECIAL RUNOFF ELECTIONS; REQUIRE CERTAIN NOTICES IN ELECTION PAMPHLETS AND POLLING PLACES; AND AMEND THE DEFINITION OF POLITICAL PARTY.

There are 74 sections to the initiative.[1] All but one amends Title 15, the Alaska Election Code. One section, section 71, seeks to amend AS 39.50.020(b) to delete a cross-reference to Title 15.

On August 29, 2019, the Attorney General issued an opinion that 19AKBE violates the single-subject rule because it covers "at least two, if not three, discrete and important subjects," namely "(1) the elimination of the party primary system and the establishment of an entirely new nonpartisan primary; (2) a new ranked-choice voting process that amends how candidates in the general election are elected and how votes are counted; and (3) additional campaign finance disclosure and disclaimer requirements."[2] On August 30, 2019, the Lieutenant Governor denied certification of the initiative application under AS 15.45.080, based on the August 29, 2019 Attorney General opinion recommending denial of certification.[3] On September 5, 2019, ABE filed this action.

II. Summary Judgment Standard

Summary judgment is warranted where "there is no genuine issue as to any material fact" and "the moving party is entitled to judgment as a matter of law."[4] Under Alaska Civil Rule 56, the non-moving party is only required to show "that a genuine issue of material fact exists to be litigated"[5] and that "the party could produce admissible

[1] Pl.'s Mot. for Summ. J., Ex. A.
[2] Pl.'s Mot. for Summ. J., Ex. B.
[3] Pl.'s Mot. for Summ. J., Ex. C.
[4] Alaska R. Civ. P. 56(c).
[5] *Christensen v. Alaska Sales & Service, Inc.*, 335 P.3d 514, 519 (Alaska 2014) (internal quotations omitted).

evidence that reasonably would demonstrate to the court that a triable issue of fact exists."[6] All reasonable inferences must be drawn in favor of the non-moving party,[7] and facts must be viewed in the light most favorable to the non-prevailing party.[8] Here, both parties agree that there is no dispute of material fact.

III. Discussion

ABE argues that the Lieutenant Governor's decision, based on the Attorney General's opinion recommending rejection of 19AKBE, misapplied the single-subject rule as established by Article II, section 13 of the Alaska Constitution. ABE argues that it is entitled to summary judgment and an order directing certification of the ballot initiative and release of petition signature booklets. The Lieutenant Governor argues that 19AKBE makes three separate changes to Alaska law in violation of the single-subject rule and asks for summary judgment to uphold the Lieutenant Governor's denial of certification.

Article II, section 13 of the Alaska Constitution provides that "[e]very bill shall be confined to one subject."[9] This single-subject rule also applies to bills proposed for adoption by the people via the ballot initiative process.[10] Over 50 years ago, the Alaska Supreme Court first addressed the purpose of the single-subject rule: "to prevent the

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[6] *Burnett v. Covell*, 191 P.3d 985, 991 (Alaska 2008).
[7] *Charles v. Interior Reg'l Hous. Auth.*, 55 P.3d 57, 59 (Alaska 2002).
[8] *Lewis v. State, Dep't of Corr.*, 139 P.3d 1266, 1268-69 (Alaska 2006).
[9] AK Const. Art. II, § 13. *See also* AS 15.45.040 (proposed bills "shall be confined to one subject").
[10] AK Const. Art. XI, § 1; AS 15.45.080 (requiring lieutenant governor to deny certification where "proposed bill to be initiated is not confined to one subject").

inclusion of incongruous and unrelated matters in the same bill in order to get support for it which the several subjects might not separately command, and to guard against inadvertence, stealth and fraud in legislation."[11] In the context of the ballot initiative process, the single-subject rule is intended to protect "the voters' ability to effectively exercise their right to vote by requiring that different proposals be voted on separately."[12]

There is longstanding precedent that courts should construe the single-subject provision "with considerable breadth."[13] The rationale for a broad construction of the single-subject provision is that "[o]therwise statutes might be restricted unduly in scope and permissible subject matter, thereby multiplying and complicating the number of necessary enactment and their interrelationships."[14]

The Alaska Supreme Court consistently has applied the same test when considering whether a bill violates the Alaska Constitution's single-subject rule:

> "All that is necessary is that [the] act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject."[15]

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[11] *Suber v. Alaska State Bond Comm.*, 414 P.2d 546, 557 (Alaska 1966).
[12] *Croft v. Parnell*, 236 P.3d 369, 372 (Alaska 2010).
[13] *Gellert v. State,* 522 P.2d 1120, 1122 (Alaska 1974).
[14] *Id.*
[15] *Croft*, 236 P.3d at 373 (quoting *Gellert,* 522 P.2d at 1123).

In applying this test, the court "'disregard[s] mere verbal inaccuracies, resolve[s] doubts in favor of validity,' and strike[s] down challenged proposals only when the violation is 'substantial and plain.'"[16]

Most recently, in *Croft v. Parnell*, the Alaska Supreme Court applied the single-subject test to an initiative which proposed a new oil production tax and a new "clean elections" program.[17] The court concluded that the initiative violated the single-subject rule because there was an insufficient connection between the two provisions of the initiative.[18] The court did not announce a new test to be applied when reviewing challenges to initiatives based on the single-subject rule. Instead, for the first time, the court concluded that there was a violation of the single-subject rule. But the court applied the same test that has been applied in seven prior cases addressing the single-subject rule. In other words, the outcome was different from the past cases, but the analysis remained the same.

The Alaska Supreme Court, in every case prior to *Croft*, when faced with a challenge to a bill or initiative for violating the single-subject rule, ruled that each bill or initiative "related to a broader, single subject" and thus did not violate the single-subject rule.[19] For example, in *Evans ex rel. Kutch v. State*, the Alaska

[16] *Id.* (quoting *Gellert,* 522 P.2d at 1122).
[17] *Id.* at 371.
[18] *Id.* at 374.
[19] *Id.* at 372 (footnote 8 collecting cases).

Supreme Court addressed a challenge to the 1997 tort reform legislation.[20] The legislation included the following different provisions:

> caps on noneconomic and punitive damages, a requirement that half of all punitive damages awards be paid into the state treasury, a ten-year 'statute of repose,' a modified tolling procedure for the statute of limitations as applied to minors, comparative allocation of fault between parties and non-parties, a revised offer of judgment procedure, and partial immunity for hospitals from vicarious liability for some physicians' actions.[21]

The Alaska Supreme Court applied the same test to determine whether the legislation embraced a "single general subject," and concluded that "[e]ven though the provisions of [the legislation] concern different matters, they are all within the single subject of 'civil actions.'"[22] The court pointed to prior decisions where the court concluded that broad legislation fit within one general subject "such as 'land' or 'the criminal law.'"[23]

In addition, the Alaska Supreme Court, relying on the explicit language in the Alaska Constitution that "'the law-making powers assigned to the legislature may be exercised by the people through the initiative,'" has made clear that the same test applies to both legislation and initiatives.[24] When faced with the question of whether to overrule its prior line of cases analyzing the single-subject

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[20] *Evans ex rel. Kutch v. State*, 56 P.3d 1046 (Alaska 2002).
[21] *Id.* at 1048.
[22] *Id.* at 1069-70.
[23] *Id.* at 1069.
[24] *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985) (quoting AK Const. Art. XII, § 11).

rule, the Alaska Supreme Court concluded that "[a] one subject rule for initiatives which is more restrictive than the rule for legislative action is not permitted."[25]

In *Croft*, the Alaska Supreme Court concluded not only that the two provisions did not relate to a single subject matter, but also that the proposed initiative "directly implicates one of the main purposes of the single-subject rule – the prevention of log-rolling."[26] The court characterized log-rolling as "appealing to different constituencies by including distinct provisions calculated to obtain sufficient votes to pass a measure."[27] Again, the court did not announce a new definition of log-rolling. Instead, it pointed to the definition provided by the Alaska Supreme Court in *Gellert v. State* in 1974: "deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure."[28] The court concluded that the initiative implicated log-rolling for two reasons: (1) "coupling the approval of a new oil production tax with approval of a program to publicly fund elections deprives the voters of an opportunity to send a clear message on each subject encompassed by the Sponsors' initiative," and (2) the directive that the legislature transfer funds left over from public elections to the Permanent Fund Dividend (PFD), when the PFD was "entirely unrelated to the purpose of the clean elections programs," "runs

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[25] *Id.*
[26] *Croft*, 236 P.3d at 374.
[27] *Id.*
[28] *Gellert*, 522 P.2d at 1122.

the risk of garnering support for the clean elections program from voters who are otherwise indifferent – or even unsupportive – of publicly funded campaigns."[29]

Here, the provisions of 19AKBE satisfy the test of relating to a single subject matter: election reform. Whether the provisions could have been written or offered as three separate initiatives is not the question before the Court or the standard to be applied in this case. Similarly, whether it is wise or unwise to adopt the proposed initiative is not a question before the Court. The sole legal question is whether the proposed initiative embraces one general subject. The answer is yes.

All of the substantive provisions of the proposed initiative seek to revise Title 15, the Alaska Election Code. All of the sections of the proposed initiative relate to each other and are germane to election reform. The proposed initiative includes revisions to both primary and general elections. Those provisions clearly relate to how Alaskans vote and select candidates for office. In addition, the proposed initiative includes revisions regarding campaign finance disclosure requirements. Those provisions seek to amend portions of the statutes which are already contained within the Alaska Election Code. The fact that the law in place now already links the topics in the same title (Title 15) reflects that there is a logical connection between campaign finance disclosures and voting. That

[29] *Croft*, 236 P.3d at 374.

connection is not diminished by the fact that different departments administer those laws. The legislature has determined previously that voters are entitled to some level of information regarding campaign contributions. ABE asserts that the proposed initiative would provide voters with additional information regarding campaign contributions and that such information is of even more importance when viewed with the other provisions of the proposed initiative such as nonpartisan elections. To the extent that provisions of the proposed initiative address additional campaign finance disclosure and disclaimer requirements, those provisions relate to the general subject matter of election reform. Because the primary election, general election, campaign finance, and all other provisions of the proposed initiative clearly relate to the general subject of election reform, there is no violation of the single-subject rule.

The longstanding precedent applying the single-subject rule does not support reading the *Croft* decision as narrowing the single-subject rule. In *Croft*, the provisions of the proposed initiative lacked a connection to each other.[30] The facts of this case are distinguishable from those in *Croft*. Here, there is a connection between the provisions addressing election reform. In *Evans*, the legislation at issue was much broader in scope and included many more provisions on different topics than the provisions at issue in 19AKBE. Yet in *Evans,* the

[30] *Croft*, 236 P.3d at 374.

Alaska Supreme Court concluded that the different matters fell within the single subject of "civil actions."[31] Similarly, here, the provisions of the proposed initiative relate to each other sufficiently to satisfy the single-subject rule.

The implication regarding log-rolling that was at issue in the *Croft* decision does not exist here. In *Croft*, the Alaska Supreme Court pointed out the different constituencies that may be appealed to with the proposed initiative together with the unrelated provision of offering the chance of increased PFD payments.[32] There is no similar unrelated provision in the proposed initiative here. Nor do any of the provisions appear to appeal to different constituencies. 19AKBE does not include dissimilar, incongruous, or unrelated matters in its provisions. The Court can discern no practical challenge to the proposed initiative on this ground. For example, the fact that one constituency may support modifications to campaign finance disclosure requirements but not support modifications to the primary election process does not warrant a conclusion that the single-subject rule is violated based on log-rolling. Looking at the language of 19AKBE, there is no indication that the provisions are targeted to different constituencies or that any of the provisions were calculated to obtain sufficient votes to pass the proposed

[31] *Evans*, 56 P.3d at 1070.
[32] *Croft*, 236 P.3d at 374.

initiative by attaching something of popularity "likely to carry along the enactment of whatever state law is attached for the ride."[33]

IV. Conclusion

For the foregoing reasons, Plaintiff's cross-motion for summary judgment is granted and Defendant's motion for summary judgment is denied. The Court orders that 19AKBE does not violate the single-subject rule in the Alaska Constitution and should accordingly be certified, and the Defendants must distribute petition signature booklets immediately by order of this Court.

A proposed judgment together with any motion for attorney's fees must be filed within 10 days.

DATED at Anchorage, Alaska this 28th day of October 2019.

Yvonne Lamoureux
Yvonne Lamoureux
Superior Court Judge

I certify that on 10-28-19 the above was emailed to the parties of record:

J. Lindemuth
S. Kendall
C. Mills
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B. Cavanaugh
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[33] *Yute Air*, 698 P.2d at 1189 (Moore, J., dissenting).

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER ELECTIONS, Plaintiff, v. KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and the STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-19-09704 CI

DEFENDANTS' MOTION FOR STAY PENDING APPEAL

The State moves for a stay of this Court's order pending the outcome of the State's appeal to the Alaska Supreme Court. That Court should have the opportunity to definitively resolve the constitutionality of 19AKBE before it is put before voters for their signatures. And that Court—which has the power to overrule the outdated decisions that this Court considered binding—is likely to agree with the State that voters deserve an effective single-subject rule that will empower them to vote on the three distinct proposals in 19AKBE separately.

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Exc. 158

I. ARGUMENT

A. To obtain a stay pending appeal, the State must make a clear showing of probable success on the merits.

A non-monetary judgment is subject to stay at the discretion of the superior court, whose determination is guided by the "public interest."[1] When considering whether granting a stay is in the public interest, the Court must consider criteria similar to the criteria for a preliminary injunction.[2] The applicable standard varies depending on the harms faced by the parties.[3] If the moving party faces "irreparable harm" and the opposing party is adequately protected from harm, the Court applies a "balance of hardships" approach in which the moving party "must raise 'serious' and substantial questions going to the merits of the case; that is, the issues raised cannot be 'frivolous or obviously without merit.'"[4] If, however, the moving party does not face irreparable harm or the opposing party cannot be adequately protected, the Court requires the moving party to show a "clear showing of probable success on the merits."[5]

In this case, the State acknowledges that the higher "probable success on the merits" standard applies because if this Court issues a stay pending appeal, the sponsors cannot be adequately protected from harm via, for example, a supersedeas bond. The

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1 *Keane v. Local Boundary Comm'n*, 893 P.2d 1239, 1249 (Alaska 1995).

2 *See id.* (providing that "the test presented in *A.J. Industries, Inc. v. Alaska Public Service Commission*, 470 P.2d 537 (Alaska 1970)"—a preliminary injunction case—"is still applicable" in the stay context).

3 *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005).

4 *Id.*

5 *Id.*

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sponsors wish to collect voter signatures in an effort to get 19AKBE on the ballot in the next election. If the Court's decision is stayed, the sponsors will lose significant signature-gathering time and likely will have to await another election. A bond cannot remedy this harm after the fact. Thus, the State must make a "clear showing of probable success on the merits" to obtain a stay pending appeal.

B. The State is likely to succeed on the merits on appeal.

The State has already briefed its merits arguments to this Court and will not repeat them at length here. In short, 19AKBE violates the single-subject rule because it would present voters with a take-it-or-leave-it proposition encompassing three independent and unconnected legal reforms: (1) replacing the party primary system with an open nonpartisan primary; (2) establishing ranked-choice voting in the general election; and (3) adding new disclosure and disclaimer requirements to campaign finance law. A ballot initiative must encompass only one subject in order to "allow[] voters to express their will through their votes more precisely, prevent[] the adoption of policies through stealth or fraud, and prevent[] the passage of measures lacking popular support by means of log-rolling."[6] The sponsors claim to champion voter voice and choice, but their initiative "does not provide the voters with an opportunity to express their approval or disapproval of each distinct proposal."[7] Voters may have different opinions on the three proposals, but would be wrongly forced to choose all or none.

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6 *Croft v. Parnell*, 236 P.3d 369, 372 (Alaska 2010).

7 *Id.*

This Court rejected these arguments, but the State is nonetheless likely to succeed on appeal because although this Court felt bound by certain precedents, the Alaska Supreme Court will not be so constrained. The State will argue on appeal that the Court should overrule the outdated case law, which the Court has expressed misgivings about for years. The Alaska Supreme Court is likely to agree with the State that voters deserve an effective single-subject rule that will empower them to vote on the three distinct proposals in 19AKBE separately. "[S]tare decisis is a practical, flexible command that balances our community's competing interests in the stability of legal norms and the need to adapt those norms to society's changing demands."[8] To the extent that outdated precedents would allow voters to be forced into an all-or-nothing choice to accept or reject 19AKBE's package of distinct provisions, the Court should overrule those precedents because they are originally erroneous and unworkable in practice, and more good than harm would result from a departure from precedent.

Allowing multi-faceted initiatives on absurdly broad subjects like "land" or "elections" to reach the ballot does not further the single-subject rule's goal of allowing voters to "express their will through their votes more precisely" and "to express their approval or disapproval of each distinct proposal."[9] Enforcing an effective single-subject rule and requiring the sponsors to submit their three major distinct reforms in three initiatives would create a small administrative hurdle in service of empowering Alaskan voters and protecting their ability to cast meaningful votes.

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8 *Pratt & Whitney Canada, Inc. v. Sheehan*, 852 P.2d 1173, 1175 (Alaska 1993).

9 *Croft*, 236 P.3d at 373.

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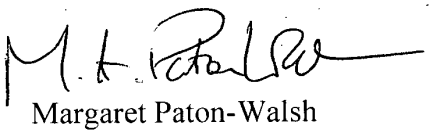
Exc. 161

II. CONCLUSION

Because the State is likely to succeed on the merits before the Alaska Supreme Court, the Court should grant a stay pending appeal.

DATED October 28, 2019.

KEVIN G. CLARKSON
ATTORNEY GENERAL

By: 

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER ELECTIONS, Plaintiff, v. KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and the STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-19-09704 CI

OPPOSITION TO MOTION FOR STAY PENDING APPEAL

Plaintiff Alaskans for Better Elections ("ABE") opposes Defendants' Kevin Meyer, Lieutenant Governor of the State of Alaska, and the State of Alaska, Division of Elections ("Defendants") motion for stay pending appeal. Because a stay would cause irreparable harm to ABE, Defendants are not harmed by complying with this court's order, and Defendants cannot show a clear probability of success on the merits, this court should promptly deny Defendants' request.

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Because of the harm ABE will suffer with each day of delay in providing the petition signature booklets, a Motion to Expedite is filed herewith. Defendants do not oppose that motion.

I. FACTS

ABE filed a ballot initiative application — later designated "19AKBE" by the Division of Elections — on July 3, 2019.[1] But the Lieutenant Governor, relying on an opinion by Attorney General Kevin Clarkson, denied certification of 19AKBE for an alleged violation of the single-subject rule.[2]

ABE filed this lawsuit on September 5, 2019.[3] Via a September 10, 2019 stipulation (the "First Stipulation") the parties agreed that Defendants would print petition booklets if ABE would post a $1,500 bond to cover the associated costs.[4] ABE posted that bond.[5] That stipulation also included a provision that Defendants would make the petition booklets "available to [ABE] by September 23, 2019."[6]

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1 *See* Letter from Lieutenant Governor Kevin Meyer to Jason Grenn (Aug. 30, 2019) (Exhibit C to Memorandum in Support of Plaintiff's Cross-Motion for Summary Judgment (Sept. 30, 2019)).

2 *See* Letter from Attorney Gen. Kevin G. Clarkson to Lieutenant Governor Kevin Myer (Aug. 29, 2019) (Exhibit B to Memorandum in Support of Plaintiff's Cross-Motion for Summary Judgment (Sept. 30, 2019)); *see* Alaska Const. art. XI, § 13 ("Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws."); AS 15.45.040 ("The proposed bill . . . shall be confined to one subject . . . .").

3 Complaint for Declaratory and Injunctive Relief (Sept. 5, 2019).

4 First Stipulation (Sept. 10, 2019).

5 *See* Notice of Filing Bond (Sept. 17, 2019).

6 First Stipulation at 2.

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But another lawsuit was filed on September 18 to prevent distribution of the petition booklets prior to certification.[7] To avoid protracted litigation regarding the timing and impacts of distributing petition booklets, an amended stipulation ("Amended Stipulation") was approved on September 19.[8] The amended stipulation included an even more expedited briefing schedule, along with an agreement that "Defendants will not distribute the petition booklets before a court order requiring distribution."[9]

After full simultaneous briefing, the parties had oral argument on the cross-motions for summary judgment on October 21, 2019. On October 28 this court granted ABE's motion, and ordered Defendants to distribute the petition booklets "immediately."[10] Defendants now request a stay pending appeal to block distribution of 19AKBE's petition booklets.

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7 *See Harry Young v. Kevin Meyer et al.*, 3AN-19-10030CI (Sept. 18, 2019) (The Plaintiff conceded that "certification" can either happen permissibly by decision of the Lieutenant Governor, or by order of the court).

8 Amended Stipulation (Sept. 19, 2019).

9 *Id.*

10 Order Granting Plaintiff's Cross-Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment at 12 (Oct. 28, 2019) ("Defendants must distribute petition signature booklets immediately by order of this Court.") (hereinafter "Order").

II. STANDARD OF REVIEW

Alaska Civil Rule 62 gives this court the ability to grant a stay pending appeal.[11] "In considering whether to grant [a stay], the [superior] court must consider criteria much the same as it would in determining whether to grant a preliminary injunction."[12]

"[W]here one party will invariably see unmitigated harm to its interests,"[13] courts must instead apply "the probable success on the merits test."[14] For the probable success on the merits standard, courts are directed to apply "the heightened standard of a '*clear* showing of *probable* success on the merits.' "[15] Defendants concede that granting their motion will cause irreparable harm to ABE and that they must meet the "probable success on the merits" test.[16] ABE agrees.

III. ARGUMENT

A. A Stay Will Irreparably Harm ABE, and Defendants' Only Possible Motivation to Seek the Stay is to Hinder Constitutional Rights.

Granting a stay pending appeal in this case would cause irreparable harm to ABE. Because ABE must submit its completed petition booklets to the Division of Elections by January 20, 2020 to be placed on the November 2020 ballot, nothing other

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11 Alaska R. Civ. P. 62(d). Defendants would not need to provide any bond or other security as a part of a stay. *See* R. 62(e).

12 *Powell v. City of Anchorage*, 536 P.2d 1228, 1229 (Alaska 1973) (citing 7 J. Moore, FEDERAL PRACTICE 62.05, at 62-24 (2d ed. 1972)).

13 *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 979 (Alaska 2005).

14 *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014) (citing *Metcalfe*, 110 P.3d at 979).

15 *Metcalfe*, 110 P.3d at 978 (emphasis added) (quoting *State v. Kluti Kaah Native Vill. Of Copper Ctr.*, 831 P.2d 1270, 1272 (Alaska 1992)).

16 Defendants' Motion for Stay Pending Appeal at 2-3 (Oct. 28, 2019) (hereinafter "Defendants' Motion").

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than immediate distribution of the booklets could adequately protect ABE's interests. Every day that goes by without ABE having the petition booklets and gathering signatures therefore irreparably harms ABE.[17]

In contrast, Defendants do not even attempt to allege any harm to their own interests by obeying this court's order to release the petition booklets "immediately."[18] Furthermore, Defendants' prior agreement in the First Stipulation to allow signature gathering during the pendency of this Superior Court action belies any permissible motivation. Indeed, Defendants' only possible motivation in seeking this stay is to harm ABE's ability to gather and submit signatures on time—in essence, the Defendants' request can only be motivated by a desire to hamper the sponsors' constitutional rights to pursue legislation through the initiative process.[19] This may be an unprecedented action—to the knowledge of ABE and its counsel, the State has never before sought to withhold petition booklets pending an appeal.

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17 *See* Affidavit of Paula DeLaiarro (Oct. 29, 2019). (Attachment 1).

18 *See generally* Defendants' Motion.

19 Defendants' only hypothetical argument is that distributing the petitions now—when a decision from the Alaska Supreme Court on the constitutionality of the initiative is pending—may cause voter confusion. But prior "confusing" ballot initiatives have previously been permitted to go before voters in petition booklets, including other very recent ballot initiatives. And ABE, not Defendants, is who actually bears the cost of possibly spending funds on a ballot measure if the Supreme Court does later invalidate it. *See* AG Opinion on 19SEBR at 5 (Sept. 26, 2019) ("Despite this lack of clarity and potential confusion in the bill's text, inconsistency with existing statutes and ambiguous bill language do not provide grounds to deny certification of an initiative."); *see also* AG Opinion on 19OGTX at 2 (Oct. 14, 2019) (describing aspects of the certified initiative as "truly confusing").

This court has already recognized the irreparable harm that delaying distribution of petition booklets would cause to ABE.[20] That is why this court ordered the "immediate" distribution of the petition booklets.[21]

B. Defendants Cannot Make a "Clear Showing of Probable Success on the Merits."

For this court to grant a stay pending appeal, Defendants concede that they must make a clear showing of probable of success on the merits.[22] Defendants do not come close to meeting this high bar.

This court concluded that 19AKBE does not violate the single-subject rule.[23] As this court noted in doing so, there is an unbroken 50-year line of eight precedential cases applying the single-subject rule.[24] Contrary to Defendants' portrayal of those cases as "outdated,"[25] the Supreme Court issued a decision on the single-subject rule as recently as 2010.[26] And, as this court further noted, the Court "applied the same test that has been applied in [the] seven prior cases addressing the single-subject rule" in that 2010 case.[27] The single-subject rule is not "stale"; it is evergreen and unchanging.

Although it is remotely possible that the Alaska Supreme Court could reach an opposite conclusion on 19AKBE, the Court would have to overturn 50 years of

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20 Order at 12.
21 *Id.*
22 *See Alsworth*, 323 P.3d at 54-56.
23 *See* Order.
24 *Id.* at 4-5.
25 Defendants' Motion at 1.
26 *Croft v. Parnell*, 236 P.3d 369, 372 (Alaska 2010).
27 Order at 6.

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precedent to do so. Defendants concede that overturning these prior cases is indeed what they will ask the Court to do.[28] Given the current test for the single-subject rule is nearly as old as the state of Alaska itself—and given that such a reversal would have a devastating impact on the Legislature's own ability to pass laws—Defendants are, at a minimum, very unlikely to succeed on appeal. Their chances are speculative at best and by definition, they cannot show a *clear* likelihood of success on the merits.[29] This court should therefore deny Defendants' request for a stay pending appeal under the probable success on the merits test.

IV. CONCLUSION

Since signing the First Stipulation, Defendants have apparently had a change of heart and wish to block 19AKBE's path to the ballot by any means available. Having lost before this court, they now engage in a disingenuous and cynical attempt to "run out the clock" on the initiative sponsors' constitutional right to legislate by initiative. This court must not permit such a procedural abuse.

Because a stay would cause irreparable harm to ABE and Alaskan voters, Defendants cannot show any reasonable harm in the absence of a stay, and Defendants cannot show a clear probability of success on the merits, this court should promptly DENY Defendants' motion for a stay pending appeal.

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28 *See e.g.*, Defendants' Motion at 4 ("[T]he [Supreme] Court should overrule those precedents because they are originally erroneous and unworkable in practice, and more good than harm would result from a *departure from precedent.*" (emphasis added)).

29 *See Alsworth*, 323 P.3d at 54-56.

Respectfully submitted this 29th day of October, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October 2019, a true and correct copy of the foregoing was sent to the following via U.S. Mail and Email:

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER ELECTIONS, Plaintiff, v. KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and the STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	Case No. 3AN-19-09704 CI

AFFIDAVIT OF PAULA DELAIARRO

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Paula DeLaiarro, being first duly sworn and deposed, hereby states as follows:

1) I am the Treasurer for Alaskans for Better Elections ("ABE").

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2) In October 2019, on behalf of ABE, I entered into an independent contractor agreement with a commercial signature gathering firm. I have worked on several ballot measures and, given the stringent requirements for the number of signatures and getting a percentage from 30 of 40 legislative districts, it is nearly impossible to meet the qualifications without the assistance of a paid signature firm.

3) ABE entered into this agreement so that the gatherer could "use good-faith efforts to obtain a minimum of Thirty-Five Thousand (35,000) valid signatures on petitions booklets and qualify 35 Alaska House of Representatives' Districts for" 19AKBE — a ballot initiative seeking to improve Alaska's elections — in time to file them before the start of the 2020 legislative session as required by law to qualify for the 2020 ballot.

4) The agreement contemplates that work will begin on October 28, 2019. This work includes "recruiting, hiring, and training petition circulators, transporting and housing petition circulators, developing turf plans for signature gathering, opening and staffing a local office and completing such other work necessary to begin signature gathering." Without the release of petition booklets, signature gathering cannot begin. Each day that passes beyond October 28th without the release of the booklets irreparably harms our ability to gather the signatures in time.

5) If the petition booklets are not distributed to ABE on October 28, 2019, ABE will have increasing difficulty in getting the requisite number of signatures before

January 20, 2020. This is partially explained by the logistics of getting petition booklets, along with people gathering signatures, to all 40 state house districts.

6) Any delay pushes back the signature-gathering timeline. Any further delay could force ABE to expend additional funds to meet the State's stringent signature requirements for initiatives.

7) If petition booklets are not distributed to ABE on or about October 28, it may not be possible for ABE to gather enough signatures for 19AKBE to be considered for the 2020 general election ballot.

8) If this court issues a stay pending the outcome of a Supreme Court appeal, it actually will be impossible for ABE to gather signatures in time for 19AKBE to be on the 2020 general election ballot. Given that ABE was actually entitled to certification on the original review date of September 1, 2019 such an outcome is unjust and unacceptable.

FURTHER AFFIANT SAYETH NAUGHT.

Paula DeLaiarro

Paula DeLaiarro

SUBSCRIBED AND SWORN to before me this 28th day of October, 2019.

Notary Public in and for State of Alaska
My Commission Expires: 2/7/2021

STATE OF ALASKA
NOTARY PUBLIC
Cody N. Beltrami
My Commission Expires: 2/7/2021

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I hereby certify that on this 29th day of October 2019, a true and correct copy of the foregoing was sent to the following via U.S. Mail and Email:

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER ELECTIONS, Plaintiff,	)	
vs.	)	
KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	)	Case No. 3AN-19-09704 CI

ORDER DENYING DEFENDANTS' MOTION FOR STAY PENDING APPEAL

On October 28, 2019, Defendants filed a motion for stay of the Order Granting Plaintiff's Cross-Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment, together with the related orders that 19AKBE should be certified and Defendants must distribute petition signature booklets immediately. Having reviewed the motion and opposition, the Court denies the request for a stay pending appeal.

Trial courts have discretion to grant a stay pending appeal.[1] The parties agree that the legal standard applicable to Defendants' request for a stay of the October 28, 2019 Order is a "heightened standard of a 'clear showing of probable success on the merits.'"[2]

[1] Alaska R. Civ. P. 62.
[2] *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005) (quoting *State v. Klui Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1272 n.4 (Alaska 1992)).

It is appropriate to apply this standard to the request for a stay because the irreparable harm Plaintiff faces if a stay is granted cannot be adequately protected by the posting of a bond.[3] The posting of a bond fails to protect the time that Plaintiff will lose to gather signatures by January 20, 2020 in an attempt to place 19AKBE on the November 2020 ballot.

Defendants assert that they are likely to succeed on the merits on appeal because 19AKBE violates the single-subject rule and the Alaska Supreme Court will be in a position to overrule its precedent. As set forth in the October 28, 2019 Order, it is this Court's opinion that 19AKBE does not violate the single-subject rule based on application of the test utilized in eight prior Alaska Supreme Court decisions. To the extent that Defendants argue that the Alaska Supreme Court is likely to overrule its precedent, the Court notes that the Alaska Supreme Court previously considered this exact question and declined to overrule the prior cases.[4] In *Yute Air Alaska, Inc. v. McAlpine*, the Alaska Supreme Court provided three reasons why it would not overrule its precedent interpreting the single-subject rule: (1) "[I]t is not at all clear that there are workable stricter standards;" (2) "[T]he sponsors of the initiative have relied on our precedents in preparing the present proposition and undertaking the considerable expense and time and effort needed to place it on the ballot;" and (3) "[A]n initiative is an act of

[3] *See Alsworth v. Seybert*, 323 P.3d 47, 54-55 (Alaska 2014).
[4] *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1180-81 (Alaska 1985).

direct democracy guaranteed by our constitution."[5] The Alaska Supreme Court has had two opportunities since the *Yute Air* decision to overrule its precedent and instead has consistently applied the same test. The 2010 *Croft* decision acknowledged that the Alaska Supreme Court has "consistently articulated the substance of the test to reflect" a broad construction of the rule.[6] The Alaska Supreme Court pointed out that "[i]n each of the seven cases in which this court has addressed a single-subject challenge, we upheld the challenged bill or initiative by determining that all provisions related to a single general subject, theme, or purpose."[7]

The Alaska Supreme Court has not addressed the single-subject rule since the 2010 *Croft* decision. But based on the existing caselaw regarding the obligation to follow precedent[8] and the standard applicable to requests to overrule precedent, Defendants have not made a clear showing of probable success on the merits in this case. The Alaska Supreme Court has indicated that it "will overrule a prior decision only when 'clearly convinced that the rule was originally erroneous or is no longer sound because of changed conditions, and that more good than harm would result from a departure from

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[5] *Id.*
[6] *Croft v. Parnell*, 236 P.3d 369, 373 (Alaska 2010).
[7] *Id.*
[8] "The doctrine of precedent is a common law doctrine under which courts are bound by prior decisions in their consideration of new cases. Precedent is a judge-made rule designed to constrain judicial decisionmaking by requiring that prior decisions with similar relevant facts be followed or, if they are not followed, that the reasons for departing from the prior rule be explained. Two types of stare decisis have been identified: horizontal stare decisis and vertical stare decisis. Horizontal stare decisis binds the issuing court to its own prior decisions. Vertical stare decisis requires that lower courts of lower rank follow decisions of higher courts. Vertical stare decisis has a stronger effect, in that lower courts generally cannot overrule decisions of higher courts, whereas a court may, given adequate reasons to do so, overrule itself." *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 43-44 (Alaska 2007).

precedent.'"[9] The Alaska Supreme Court further explained that "[a] decision may prove to be originally erroneous if the rule announced proves to be unworkable in practice."[10] Here, it appears that the single-subject rule announced is workable in practice. The *Croft* decision itself is an example of the rule working in practice. In addition, the Court is unaware of changed conditions to overcome the rule of stare decisis.

Because Defendants do not satisfy the heightened standard of a clear showing of probable success on the merits, the Court denies the Motion for Stay Pending Appeal.

DATED at Anchorage, Alaska this 30th day of October 2019.

Yvonne Lamoureux
Yvonne Lamoureux
Superior Court Judge

I certify that on 10-30-19 the above
was emailed to the parties of record:

J. Lindemuth
S. Kendall
C. Mills
M. Paton-Walsh

B Cavanaugh
B. Cavanaugh, Judicial Assistant

[9] *Pratt & Whitney Canada, Inc. v. Sheehan*, 852 P.2d 1173, 1176 (Alaska 1993).
[10] *Id.*

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER ELECTIONS, Plaintiff, v. KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and the STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	)	Case No. 3AN-19-09704 CI

#8

~~[PROPOSED]~~ FINAL JUDGMENT

For the reasons set forth in the Order Granting Plaintiff's Cross-Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment on October 28, 2019, final judgment is hereby entered for the Plaintiff as follows:

1. 19AKBE does not violate the single-subject rule in the Alaska Constitution and should accordingly be certified.

2. Defendants must distribute petition signature booklets immediately by order of this Court.

3. Defendants shall pay Plaintiff's fees and costs in the amount ~~of~~ to be determined following the briefing of any motion for fees and costs.

DATED 11/4/2019.

Yvonne Lamoureux
Yvonne Lamoureux
Superior Court Judge

NOV 01 2019

DEPARTMENT OF LAW
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I certify that on 11-4-19
a copy of the above was mailed to each
of the following at their address of record: S. Lindemuth/ S. Kendall/ M. Raven-Walsh
BCavanaugh
Judicial Administrative Assistant

000007

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